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# THE CONSTITUTION OF THE DOMINION OF INDIA.

By

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AND

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*With a Foreword by*

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## PREFATORY NOTE.

The arrangement of the book is on the following lines. We have divided it into three Parts. The first part contains the Indian Independence Act, 1947, and the reports of the Boundary Commissions relating to the Punjab, Bengal and Sylhet District in Assam. In the second part is given the Government of India Act, 1935, incorporating the various amendments, adaptations and modifications made from time to time, ending with the India Provisional Constitution (Second Amendment) Order, 1947. Part III contains the various Orders made within recent months by the Governor-General in exercise of the powers conferred on him by S 9 of the Indian Independence Act, so far as they relate to India. All Orders made up to the end of October, 1947, are included. The different Orders in Council made prior to the 'appointed day', also form part of the statutory material of the Constitution, but it has not been possible to include them in the book. The three Parts are preceded by an Introduction, which gives a general survey of the constitutional position.

We had intended to make the book available to the public by the 15th of September. The disturbed conditions in the city and difficulties in the Press have held up the publication till now, and even now the work has had to be rushed in the Press by new men. We make our apologies to the readers for typographical errors which may have crept in. The errors which have come to our notice are indicated in the list printed below.

We tender our thanks to Sir Patrick Spens for the interest he has taken in the preparation of this book and for his Foreword.

New Delhi,  
1st Nov 1947

P N M  
K V P,

## Errata

### INTRODUCTION

Page ix, line 12, for "Attorney for General, Canada" read "Attorney General for Canada"

Page ix, 2nd line from bottom, after "obligations" add "have been"

Page xx, line 12, for the words "India Imperator", read "Indiæ Imperator"

Page xxi, line 37, for "pawers" read "powers"

### PART I

Page 1, line 8, for "government", read "Government"

Page 3, Section 2 (2) (b), after "date" add "of"

Page 41, line 3, for "adopted" read "adapted"

Page 42, section 18, after "constitution" add "of the"

Page 42, Section 19, after "Legislature" add "and its" and omit "and dissolution"

Page 43, for "43-45 (omitted)" read "43-44 (omitted)" and add "Ch V omitted, S 45 omitted"

Page 45, for S "49" read "94"

Page 47, S 125, for "Indian" read "Acceding"

Page 47, S 125A "for Amendments as to proclamations of emergency", read "enhanced powers of Dominion when a proclamation of Emergency is in operation",

Page 47, S 128, for "Dominion" read "Federal"

Page 48, S 137, after "succession duties", add "estate duty"

Page 48, S 150, for "Indian" read "Dominion"

Page 49, S 155, for "Dominion" read "Federal"

Page 50, S 202, after Justice add "and acting puisne Judges"

Page 50, S 205, omit the word "British"

Page 51, in the line after "chapter II" omit "British"

Page 53, for 284 read 284A

Page 54, "after 291, Franchise and elections," add the following sub-heading —

Provisions as to certain legal matters"

Page 54, S 306, omit "or" and after "Governor" add "or Secretary of State"

Page 60, line 4, omit "the"

Page 60, Section 19, after "Legislature" add "and its" and omit "and dissolution"

Page 62, at the end of Section 29, add the following sub-heading — "Legislative Procedure"

Page 67, after 42" add "Power of Governor-General to promulgate ordinances in cases of emergency"

Page 67, for "Ss 43 to 45 (omitted)" read "ss 43 and 44 (omitted)" and add Ch V

"Provisions in case of failure of constitutional machinery S 45 (omitted)"

Page 71, Section 61, after "Legislatures" add "(1)"

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## INTRODUCTION

As the title indicates, this publication deals with the Constitution of the Dominion of India as it is now in force. That constitution is given in Parts I, II and III, which follow. Here, we propose to survey the position broadly and generally. We make no long excursions into past history, most of which has been forgotten or will soon be forgotten.

A brief historical retrospect may however be found useful in comprehending the present position. For, as pointed out by the British Prime Minister<sup>1</sup>, the Indian Independence Act, 1947, formed the culminating point in a long course of events. He referred to the action taken by His Majesty's Government in the United Kingdom as "the fulfilment of Britain's mission in India". The beginning of the twentieth century marked the conception of a new idea and the adoption of a new policy by Great Britain in its relations with the dominion of India. The past thirty years have witnessed the gradual growth and development of that idea and that policy. The Morley-Minto Reforms of 1909, the Montagu-Chelmsford Reforms of 1919, the Report of the Indian Statutory Commission, the deliberations of the Round Table Conferences in London, the Government of India Act of 1935, the Cripps Mission of 1942, the visit of the British Cabinet Delegation in 1946 and the further discussions which followed, are all steps on the road that led up eventually to the setting up of the two independent Dominions of India and Pakistan.

The pre-1919 set up of government was simple enough. It was unitary in character, its cardinal features were (1) the concentration of all authority at the Centre, (2) the supremacy of the executive in the field of administration as also that of legislation and (3) the ultimate responsibility of the British Parliament for the whole of Indian Government. The supremacy of the Parliament of the United Kingdom over the Government of India and that of the Government of India over local Governments was firmly established; and so was the principle

<sup>1</sup>Parliamentary Debates (Hansard) H C 10th July 1947

of unity in the administration of the country. The value of the reforms of 1909 lay chiefly in the establishment of the principle of representative government in the Provinces. The "progressive realization of responsible government" was declared to be the policy of the British Parliament in 1919, and as an experiment a measure of responsibility in the provincial field was introduced in the new Constitution of that year. "Responsibility," wrote the authors of the Montagu-Chelmsford Report in 1917, "is the savour of popular government and that savour the present councils wholly lack." The system of government devised in the Act of 1919 was known as dyarchy or dual government. The Provinces were the domain in which the experiment of responsible government was to be made. Two spheres of government were introduced in the provincial field, one a self-governing sphere, with certain subjects known as "nation-building" subjects transferred to Indian hands, and in the other the old system of government was retained, with certain "reserved" subjects. A gradual enlargement of the "transferred" sphere and the ultimate extinction of the "reserved" sphere was the aim which Parliament had in view. The government of the country still remained unitary in character, there was no federal element present then, there was only a delegation of large powers to the Provinces, effected by means of statutory rules known as the Devolution Rules.

The next stage was the Government of India Act 1935, an Act which was passed by the Parliament of the United Kingdom after nearly 10 years of discussions in India and England, superseding all previous enactments and which assigned a definite constitutional position on a federal basis to the Centre and its constituent units. The statutory material of that Constitution was not confined to the 321 sections of the Act, but extended to a number of Schedules to the Act and Orders in Council passed under the Act, and also other important documents such as the Berar Agreement, the Instruments of Instructions to the Governor-General and the Provincial Governors, Letters Patent, etc. The avowed object of the new Constitution was to extend the sphere of responsible government throughout the Provinces, subject to certain safeguards, and to introduce responsible government at the Centre with reservations and safeguards. In other words, the "double rule" which had hitherto prevailed in the Provinces was to be trans-

ferred to the Centre. The old unitary form of government was abandoned and a new federal form adopted, in which both the Indian States and the British Indian Provinces were to function as constituent units, the former self-acting and the latter self-governing. The Princes themselves welcomed the idea of a great Federation of India, and advantage was taken of their declaration to join the Federation.

The main features of the Act of 1935 were as follows. *Firstly*, the Act developed provincial autonomy by giving the Provinces a separate legal personality and freeing them largely from central control. It established full responsible government subject to safeguards in all the eleven Provinces. *Secondly* it provided for the establishment of "Federation of India" by which was meant the greater federation, comprising both Indian States and British Indian Provinces, with a Central Government and Legislature for the management of central subjects. *Thirdly*, the dyarchical form, abolished in the Provinces, was reproduced at the Centre. The subjects of foreign affairs, defence and ecclesiastical affairs were reserved for the control of the Governor-General, the other central subjects being transferred to Ministers, subject to safeguards as in the Provinces. This part of the Act not having come into force, because of the indecision of the Princes, there was in force up till the 15th August 1947 a transitional government based mainly on the old system. The provisions relating to the Central Judiciary (the Federal Court) were, however, put in operation with the exception of one section (s. 206). *Lastly*, the separate communal electorates which had been introduced in 1909 and repeated in the 1919 Constitution were retained, and the seats were distributed on the lines of an award given by the British Prime Minister, known as the "Communal Award".

The first thing of importance to note in the 1935 Constitution was the geographical change effected by it from the 1st of April, 1937. That date marked the regrouping of the Provinces into eleven autonomous units and the shedding of outlying terrains, namely Burma and Aden. The Government of India Act which was then in force was repealed by the new Act, with the exception of the Preamble which set out the aim of the British Parliament. The method adopted by Parliament was first to resume into the hands of the Crown all 'right



authority and jurisdiction in and over the territories of British India which had previously been delegated to different authorities, and then to redistribute the powers between the Central Government and the Provinces. Next in order of importance was the introduction of 'Provincial Autonomy' on the said date. The old unitary system of government was replaced from that date onwards by the new federal conditions. As from that date there were no longer in India a number of Provinces under the tutelage of a Central Government, but eleven autonomous States 'pulsing with a vigorous life of their own and dividing with the Government of India the legislative and executive powers of government'. What might be called a British India Federation thus arose, a Federation of eleven Provinces associated together in an organic union.

As for responsible government in the 1935 Constitution, reliance was placed mainly on two sections in the Act, one in part II and the other in Part III, namely, sections 9 and 50, relating to Councils of Ministers to aid and advise the Governor-General and the Governors respectively. It is said that those two "vital sections", together with the provision in the Instrument of Instructions directing the Governor-General and Governors to select Ministers from among the majority party in the Legislature, were meant to establish responsible government in the country. Pointed attention was drawn some time ago to those sections by an eminent authority, who made the following observation<sup>1</sup> "Those are the provisions, as Lord Durham's great report pointed out over a hundred years ago, which established responsible government, and responsible government once established, the disappearance of restrictions and limitations on the powers of Ministers could only be a matter of time." Part II of the Act of 1935 remained however inoperative during a whole decade and the government at the Centre was carried on, until recently, mainly under the provisions of the old Government of India Act, which were kept alive in the Ninth Schedule to the Act of 1935. Hence the Centre did not witness the anticipated growth of a responsible popular ministry. But the setting up of an "Interim Government"

1 Sir Maurice Gwyer on Indian Constitutional Problem in *India Quarterly* January 1945

in September 1946 made up for much leeway and produced quick results. The India (Central Government and Legislature) Act, a Parliamentary Statute of 1946, made it possible for the formation of the "Interim Government" on the lines indicated by His Majesty's Government in the Statement issued by the British Cabinet Delegation and the Viceroy on May 16, 1946.<sup>1</sup>

The Act of 1935 marked the beginning of the final stage in the constitutional evolution of India. The framers of the Act had anticipated a steady process of development on conventional lines, a process of freedom slowly broadening down from precedent to precedent. Hence there was no provision made in the Act for a further revision, as had been done in the earlier Act. It was emphasized by official spokesmen that the provisions of the Act which precluded full self-government were only transitional. In his evidence before the Joint Parliamentary Committee, Sir Samuel Hoare, the then Secretary of State for India, said "In course of time, other Acts of Parliament will be necessary, more to recognize a state of affairs that is in existence than to make actually new changes." The final act of settlement is the passing by the Parliament of the United Kingdom of the Indian Independence Act in July 1947. That Act does no more than recognize a state of affairs actually in existence. One marked change has been brought about by it, namely, the creation of two independent Dominions, instead of one, but even that may be said to be the recognition of an existing state of affairs.

Before proceeding further, we may allude briefly to the theory and practice of Dominion autonomy as it has developed, in the British Commonwealth of Nations within the last thirty years. It was at the Imperial Conference of 1907 that the word "Dominion" with its technical denotation first emerged, and the succeeding Conferences attempted to define the position of independence which the Dominions were claiming for themselves. The Conference of 1926 recorded its epoch-making decision in a formal resolution that the members of the group of self-governing communities composed of Great Britain and the Dominions were, autonomous communities within the British Empire, "equal in status, in

no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." In the words of Prof. Keith, Dominion autonomy demands that the legislation of the Dominions shall be completed on the authority of their own Parliaments, in which the Governor-General must act without interference by the Imperial Government on the same lines as does the King in the United Kingdom. The doctrine of the supremacy of Imperial legislation in its application to the Dominions is gone. The power of the Imperial Parliament to legislate on succession to the throne or the royal title is admitted, but subject to the rule that any change effected requires the assent of the Dominions also. Further, the territorial limitation of Dominion legislation has disappeared entirely. Reality of autonomy is secured in external affairs. The status of the Dominions thus approximates to sovereign independence.

It was that sovereign independent status which came to be legally recognized by the Statute of Westminster in 1931. That statute, like the present statute of Indian independence, did no more than dot the i's and cross the t's of constitutional practices which had already been known and recognized. Non-legal rules and practices indicating further advance in thought have emerged within recent years. One question of importance which has been debated is whether the Dominions have the right to secede from the Commonwealth. It is idle to speculate on this theoretical aspect. All that can be said is that the group of independent communities which constitute the Commonwealth have thought it advantageous to cohere, and there the matter ends. The concept of the Commonwealth is in the process of development. It is not static. Referring to the two new independent Dominions which were being set up on the 15th of August, the British Prime Minister remarked in the House of Commons on the 10th of July 1947 that that action of Parliament was a sign of the strength and vitality of the British Empire. He added: "There have been great Empires in the past in which many nations have been brought together in one polity, but they perished because their rigidity of structure did not allow of growth, and because the peoples which composed it were subjected to the will of one dominant race." The British Common-

wealth of Nations survives today, and has survived through the strain of two great wars, precisely because it is constantly developing, and because it has throughout the years steadily changed from an Empire, in which the power of control rested with Britain, to a partnership of free people inspired by common ideals and united in a common interest."

We may now proceed to a comparison of the two statutes, to understand the relative position of the new Dominions of India and Pakistan. It may first be noted that there is no statutory definition of the word "Dominion". As early as 1921, Mr Lloyd George observed that it was difficult and dangerous to define the status of a Dominion. The Dominions that are governed by the Statute of Westminster are only named in that statute, and they are Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland. Obviously, it would not do to include in the list India and Pakistan. Speaking on the Government of India Bill more than 12 years ago, the Attorney-General in His Majesty's Government gave the following explanation of the words "due place of India" occurring in the Instrument of Instructions to the Governor-General. He said "That place must be, in the very nature of the country, something not quite the same as the place, shall I say of New Zealand or of South Africa or of the other Dominions. India is a far different proposition altogether. I have no doubt that India will attain her due place amongst His Majesty's Dominions, but that is not to say that the problems with which she will have to deal will be problems that will be settled in precisely the same way as those in which similar problems are settled in connection with His Majesty's other Dominions". In other words, the Dominions associated together within the British Commonwealth are not all square edifices of precisely the same nature. India and Pakistan have therefore been set up as Dominions by a separate and self-contained enactment, by which they are governed for the time being.

It is significant that the comprehensive preamble to the Statute of Westminster is replaced by a brief and simple statement of the object of the Indian Independence Act. In the third paragraph of the preamble to the Statute of Westminster, it is stated: "No law hereafter made by the Parliament of the United Kingdom shall extend to any of the Dominions otherwise than at

the request and consent of that Dominion" This provision amounts to a formal renunciation by the British Parliament of its legislative supremacy over the Dominions, but the effect of the last part of the sentence quoted above, read with section 4, is to place it in a position of pre-eminence over the Dominion Parliaments. Further, the powers conferred on a Dominion under the Statute of 1931 to repeal or amend British Parliamentary statutes extends only to the repeal or amendment of any existing or future Act of the Parliament of the United Kingdom, so far as it is part of the law of the Dominion. The Statute of Westminster itself could not be repealed or amended. That statute is by its terms as well as by those of similar Acts simultaneously passed by Dominion Parliaments unalterable by those Parliaments. The corresponding provision in the Act of 1947 says that each of the new Dominions can repeal or amend this or any existing or future Act of Parliament of the United Kingdom (s 6(2)). The language of sub-section (4) of section 6 of the Independence Act is also noteworthy. It runs as follows "No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend to either of the new Dominions unless it is extended thereto by a law of the legislature of the Dominion." The difference in the language employed in the two Acts is significant. Whereas in the case of the Dominions of the Statute of Westminster type Parliament of the United Kingdom can legislate for a Dominion, though at the request of the Dominion, in the case of India and Pakistan the effective legislating authority is the Legislature of the Dominion itself, not an outside authority.

Apart from the direct implications of the Statute, there are other aspects of the position of the Dominions, for not all aspects are covered by statute. Among the more important ones may be mentioned the independence of the judiciary. In the judicial sphere, the practice has been that the Privy Council in England functions as the supreme court of appeal from the decisions of the High Courts in the Dominions. Strictly speaking it is an exercise of the prerogative of the Crown to grant special leave to appeal. It is also embodied in an Act of Parliament passed in 1844 (the Judicial Committee Act). But there is nothing to prevent the Dominions from passing a law prohibiting appeals to the Privy Council, for, the rule of repugnancy under s 2 of the Colonial Laws Vali-

ality Act does not operate in the case of the Dominions. Some of the Dominions have in fact passed legislation to that effect, e.g. the Irish Free State. By the Constitution (Amendment No 22) Act, 1933, Eire has provided (1) that no appeal shall lie from a decision of the Supreme Court or of any other Court in the Irish Free State to His Majesty in Council and (2) that it shall not be lawful for any person to petition His Majesty for leave to bring any such appeal. Attention may also be drawn in this connection to a recent decision of the Privy Council in an appeal from the Supreme Court of Canada *Attorney General for Ontario v Attorney for General Canada* [1947 A. C. 127 (J.C.)]. In that case it was urged before the Board that to interpret the Statute of Westminster as vesting in the Dominion Parliament a power which it did not before possess was in effect to repeal or amend, or at least to alter, the British North America Act. Their Lordships refused to accept that reasoning. They held that necessarily the effect of the Statute of Westminster was to amend and alter the Act in so far as from the operation of the Statute there arose a new power in the legislatures of both the Dominion and the Provinces. Bill 9, introduced into the Canadian Parliament in 1939 and entitled "An Act to amend the Supreme Court Act of Canada", provided that "the Supreme Court shall have, hold and exercise exclusive ultimate appellate civil and criminal jurisdiction within and for Canada, and the judgment of the Court shall in all cases be final and conclusive" and that "notwithstanding any Royal prerogative or anything contained in any Act of Parliament of the United Kingdom or any Act of the Parliament of Canada no appeal shall lie or be brought from any court within Canada to any court of appeal, tribunal or authority by which in the United Kingdom appeals or petitions to His Majesty in Council may be ordered to be heard". The bill further provided that the Judicial Committee Acts 1833 and 1844 and all orders, rules or regulations made thereunder, were repealed in so far as they were part of the law of Canada. The vires of the proposed legislation came to be challenged. The Judicial Committee of the Privy Council held that Bill 9 was wholly *intra vires* the Parliament of Canada.

Another aspect arising for consideration is the position of the new Dominions in the eye of international law. Certain rights have accrued to and obligations incurred by India as a member of the United Nations, The

question is, which of the two States is now to be recognized as the "successor State"? A statement attributed to the Secretary-General of the United Nations Organization is to the following effect: "The situation is one in which part of an existing State breaks off and becomes a new State. On this analysis there is no change in the international status of India; it continues as a State with all treaty rights and obligations of membership in the United Nations. The territory which breaks off—Pakistan—will be a new State." In other words, the diminished

State does not cease to exist. There is no *disaggregation totale* and therefore no extinction of the international personality of the original State of India. The purist may hesitate to accept the position indicated above, but as a practical solution of the problem it has its merits. By mutual agreement the two new States have come to such an arrangement, and there is therefore no scope for any unrealistic and academic discussions on the subject. The Governor-General has accordingly made an Order, in exercise of the powers conferred upon him by s. 9 of the Independence Act, known as the Indian Independence (International Arrangements) Order, 1947<sup>1</sup>, providing for the devolution of international rights and obligations.

An important outcome of the development of Dominion autonomy has been the tendency to create a Dominion nationality. It is earnestly hoped that the new Dominions of India and Pakistan will also witness the growth of a sturdy Dominion nationality which will transcend communal and religious barriers. The result of the common allegiance of the Dominions to the Crown has been the promotion of friendly and cordial relations between the Dominions *inter se*. It is hoped that a similar result will follow the setting up of the two Dominions in the Indian sub-continent. As one member of the House of Commons, at the Committee stage of the Bill, put it, the frontiers between the two must be like the frontier between the United States and Canada, "where one can see no guard and where there are miles and miles of friendly contact." The various decisions of the Imperial Conferences which preceded the formation of the Dominions under the Statute of Westminster do not necessarily govern the new Dominions. But India and Pakistan are not likely

to remain unaffected by the spirit which underlies those decisions. In answer to a question specifically put to him whether and to what extent the new Dominions acceded to the decisions of the Imperial Conferences, the British Prime Minister replied "We are dealing here with a particular status, not so to speak, of agreements made under that status, but, I should say, under various agreements reached before. The entry of the new Dominions would be a matter for their consideration." As to relations between the United Kingdom and the new Dominions, we can only refer to the observations made by the British Prime Minister in the House of Commons on 10th July 1947. He said. "It has been our intention that there should be negotiated and concluded, simultaneously with the transfer of power, treaties or agreements covering matters arising out of the transfer of power in India. Owing to the course of events in India it has not been possible for such agreements to be negotiated. It is only since the statement of His Majesty's Government of 3rd June that it has become clear that the transfer of power will be to two separate States. Apart from matters arising out of the transfer of power, there are other important matters on which we hope to have negotiations with the Indian and Pakistan Governments. We desire to establish, by free negotiation, close, cordial, and effective arrangements with both the new Dominions in all fields affecting our common interests, and particularly in regard to defence matters and in the economic field."

We may now proceed to a detailed consideration of the provisions of the great charter of Indian Independence. The Independence Act, 1947 makes provision for the setting up in India of two independent Dominions, substitutes other provisions for certain provisions of the Government of India Act, 1935, which apply outside the Dominions, and provides for other matters consequential on or connected with the setting up of the Dominions. It passed through both Houses of Parliament and received the Royal assent in a remarkably short space of time and became law on the 18th July 1947. It has given retrospective effect to the steps taken by His Excellency the Viceroy in accordance with the announcement made by His Majesty's Government on the 3rd June, 1947. Thus all action taken by him since that date has received legal sanctity. The Act is a docu-



ment of extraordinary simplicity and consists of no more than twenty sections and three schedules. It was possible to attain this simplicity, because it left all other matters to be dealt with by the Governor-General. The Act is more an enabling measure than a detailed expression of Parliament's intentions or policy.

The first section of the Independence Act refers to the new Dominions and provides that as from the "appointed day", there shall be set up in India two independent Dominions known respectively as India and Pakistan. Explaining this provision in the Bill, the Prime Minister of Great Britain observed in the House of Commons<sup>1</sup> "The British Commonwealth of Nations is so unique that its nature is still not fully comprehended. Membership of the British Commonwealth, in the words of the Prime Minister of New Zealand, is independence with something added, not independence with something taken away. In this Bill we set up two independent Dominions, free and equal, of no less status than the United Kingdom or the Dominion of Canada, completely free in all respects from any control by this country, but united by a common allegiance to the Sovereign and by a community of ideas receiving from their membership of the Commonwealth great advantages but in no way suffering any restriction. The title of this Bill expresses this fact, that the independence which has been the goal for so long of many Indians can be and, I believe, will be realised within the British Commonwealth of Nations." The word "independent" was added for historical and psychological reasons. As for the particular names selected for the Dominions, he said that they were the names by which the spokesmen of the Indian parties wished the Dominions to be called. He added that it was within the power of the Dominions, after they were set up, to change the names if they so desired. The "appointed day" was fixed as the 15th August 1947.

Sections 2, 3, and 4 which deal with the extent of the territories of the two Dominions, give effect to the methods which were prescribed in the announcement made on June 3, 1947, whereby the people through their representatives were given the opportunity of deciding on the division of territory. It had been decided that Bengal and the Punjab should be divided and that the future of the North-West

<sup>1</sup> Parliamentary Debates (Hansard) H C 10th July 1947

Frontier Province and of Sylhet District in Assam should be determined by means of referenda. As a result of the referenda, Sylhet has gone into the new Pakistan area of Bengal and the North-West Frontier Province has been included in the Dominion of Pakistan. The detailed delimitation of boundaries was left to be done by Commissions set up for the purpose known as Boundary Commissions. The reports of these Commissions are given elsewhere.<sup>1</sup> As the members of both the Bengal and the Punjab Commissions were not able to agree among themselves, the award of the Chairman has, in accordance with the provision contained in section 3 (4) and section 43 of the Indian Independence Act, decided the issue.

Referring to the territories of the new Dominion of India, the Under Secretary of State for India explained in the House of Commons that what were passing to the new India were all those territories, which immediately before the appointed day, with the exception of those that were to be transferred to Pakistan, had been under the sovereignty of His Majesty, and they included not only the Andaman and Nicobar Islands, but also the Laccadive Islands. With regard to Berar, the following explanation was given by him :—

"Section 47 of the Government of India Act, 1935, does, in terms, recognise the sovereignty of the Nizam of Hyderabad, and says 'Whereas certain territory (in the Act referred to as Berar) is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces.' Following the passage of the 1935 Act, the necessary agreement was entered into with the Nizam in 1936. The effect of Clause 7 (1)(b) of this Bill is to terminate the 1936 Agreement. There can be no doubt that it does remove the legal basis for Berar's administration, as if it were part of British India. In other words, Berar will undoubtedly *de jure* revert to Hyderabad. That is the legal position. But we have to face the realities of the position. This Province of three or four million inhabitants is administered entirely by officials of the Government of India, and of the Provincial Government of the Central Provinces and Berar, and it would be quite impossible for any change to take place, in a matter of

days, involving the taking away of the administrative machine and its replacement by officials of the Nizam. Therefore, it will obviously be necessary for the Government of India to enter into discussions with the Nizam, either to continue the existing arrangements or to replace the present set-up in the light of the legal position." As a result of discussions which took place subsequently between the Governments concerned, s. 47 of the Government of India Act has been adapted as follows by the India (Provisional Constitution) Order :—"Berar shall continue to be governed together with the Central Provinces Government as one Governor's Province under this Act in the same manner as immediately before the establishment of the Dominion"

Section 2 (1), as well as section 2 (2), uses the words "subject to the provisions of sub-sections (3) and (4), the territories of India shall be . . ." The territories are then specified. The object of inserting sub-section (3), it is said, was to put beyond any argument that those boundaries can be altered, but they can be altered only with the agreement of the Government of India, or the Government of Pakistan. As to possibilities of secession under the provisions of the Act, the Under Secretary of State for India explained that there was certainly nothing in it which in terms laid down that it was within the power of a Province in the new Dominions to secede. He added "The question how they work out their own salvation in the future, even on a matter like that, will be entirely one for them, and will depend upon the constitutions which their Constituent Assemblies draw up"

Section 5 provides for the appointment by the King Governor-General of a Governor-General for each of the new Dominions. The Governor-General is to represent His Majesty for the purposes of the Government of the Dominion. Obviously, the normal Dominion practice could not be adopted for the first appointment of the Governor-General in the Dominions. Although there came into existence two Dominions as from the 15th August 1947, there were no Ministers formally to advise the Crown. Until a Governor-General had been appointed, Prime Ministers could not have taken office. In the present case, therefore, it was agreed with the leaders, and the King's approval was obtained, that the Viceroy should consult the recognised leaders of the main political parties as to whom they would wish to recommend for appointment as Governors

General of the Dominions. In accordance with the recommendations so made, it was decided to have separate Governors-General for both the Dominions and the persons selected by the representatives of the people were appointed. The essential feature in the Dominions of the British Commonwealth is responsible government. The administration rests with the Ministry under the Governor-General.

Section 6 deals with the powers of the Legislature of each Dominion. As already pointed out, the Legislature of each Dominion is given full power to make laws having extra-territorial operation (sub-section (1)). This provision is on the same lines as section 3 of the Statute of Westminster, 1931. The aim of the section is to put the new Dominions in the same position as that in the existing Dominions, that is to say, that they should not be fettered by any of those limitations which attach to colonial legislatures. This sub-section, though different in actual form from the corresponding provision in the Statute of Westminster, is designed to bring about the same effect. In answer to a question put to him, whether the Provinces in the New Dominions have the power to make laws having extra-territorial operation, the Attorney-General, at the Committee stage of the Bill in the House of Commons, made the following observation: "It is a question which depends entirely on the ultimate form of the Constitution which is established, by the Constituent Assembly for the various Provinces. I should think they might follow what is the more usual course of not giving extra-territorial powers to the Provinces<sup>1</sup>." When questioned as to the limit of extra-territorial legislation, the Attorney-General pointed out that there was no limit so far as the country which passed the legislation was concerned. The United Kingdom Parliament, for instance, can pass such legislation to any limit which seems proper to it. Whether that legislation will receive any recognition internationally by other countries is an entirely different matter. The general rule, in international law should not be lost sight of, namely that countries are not recognised as possessing any powers of extra-territorial legislation except with regard to their own subjects. Sub-sections (2) and (4) provide for the legislative supremacy of the Dominions. Attention may

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1 Parliamentary Debates (Hansard) HC 14th July 1947

be drawn to the provision contained in sub-section (3). The position of the Governor-General in the Dominions is that he is a deputy of the King. In theory, he is clothed with all the powers of the King. The Governor-General is the repository, together with his Government, of the prerogative of the Crown, in so far as it is necessary for the Government of the Dominion. The right of His Majesty to disallow laws or the right to reserve laws for the pleasure of His Majesty is therefore given up and the Governor General of each Dominion is given full power to assent in His Majesty's name to any law of the Legislature of the Dominion made in its ordinary legislative capacity. Attention may also be directed to sub-section (6). A statement made by the Attorney-General in the House of Commons at the Committee stage of the Bill explains this apparently superfluous provision. He said, "The position is that it will be open to the Legislature to provide for a federal (type ?) of constitution under which the powers of the different legislatures are limited, certain subjects being limited to the one and certain subjects to the other. If it did that, it would need to make provision that the powers of the particular provincial Legislature should be limited. That is the object of the sub-section."

The provisions of section 6 may be read in conjunction with the appropriate provisions contained in s. 8, to understand clearly the position of the new Dominion Legislature. Sub-sections (1) and (2) of the section establish the sovereign character of the legislature of the Dominion. Sub-sections (4) and (5) reiterate the same position so far as future Acts of Parliament and Orders in Council etc are concerned. Having thus provided for sovereignty to dwell in the future Dominion Legislature in s. 6, the Act makes temporary provisions in s. 8 for the government of each of the Dominions, and these temporary provisions also comprehend the legislative sphere. Section 8 (1) makes the existing Constituent Assembly the Dominion Legislature for the time being, but only for a specific purpose, namely, that of making provision as to the constitution of the Dominion. Until it makes such provision, according to sub-section (2), each of the new Dominions and all the Provinces and other parts thereof shall be governed *as nearly as may be* in accordance with the Government of India Act, 1935, subject of course to such omissions, additions, adaptations and modifications

as may be made by orders of the Governor-General under section 9. The said power of the Governor-General, under s 9, to adapt or modify the Act, is itself limited to the purposes specified in the section. The proviso to s 8 (2) further clarifies the general position indicated above. It emphasizes that no control of His Majesty's Government in the United Kingdom over the affairs of the new Dominions or any Provinces or other parts shall continue on or after 15th August 1947. Para (e) of the proviso may be noted. It lays down that the powers of the previously existing Indian Legislature shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion, in addition to the powers exercisable by that assembly under s 8 (1). Sub-section (3) of s 8 then provides for a limit or restriction on the ordinary legislative capacity of the temporary Dominion legislature (i.e. the Constituent Assembly), until other provision is made by the Constituent Assembly acting as Dominion Legislature for constitution-making purposes under s 8 (1). Such restriction or limitation, it is provided, shall have the like effect as a law of the legislature of the Dominion.

Section 18 of the Government of India Act has been adapted accordingly by the India (Provisional Constitution) Order. It now reads as follows — "The powers of the Dominion Legislature under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly under ss (1) of s 8 of the Indian Independence Act, 1947, be exercisable by that Assembly, and accordingly references in this Act to the Dominion Legislature shall be construed as references to the Constituent Assembly"

Section 7 deals with the consequences of the setting up of the new Dominions. Firstly, His Majesty's Government in the United Kingdom have, as from 15th August 1947, (no responsibility as respects the government of any of the territories comprised within the two Dominions). The second consequence is that the suzerainty of His Majesty over the Indian States, more familiarly known as paramountcy, lapses as from that day, and with it all treaties and agreements, all functions exercisable by His Majesty with respect to Indian States, all obligations of His Majesty towards Indian States or their Rulers, and all powers, rights, authority or jurisdiction exercisable by His Majesty in relation to Indian States, by treaty, grant, usage, sufferance or otherwise also lapse. The following

Position of Indian States

statement made by the British Prime Minister at the Bill stage in the House of Commons explains fully the implications of the provisions contained in this section. "The House will remember that the Cabinet Mission in their memorandum of 12th May, 1946, informed the States that His Majesty's Government could not, and will not in any circumstances, transfer paramountcy to an Indian Government. With the transfer of power to two Indian Dominions, it is necessary to terminate the paramountcy and suzerainty of the Crown over the Indian States, and, with them, the political engagements concluded under paramountcy and the mutual rights and obligations of the Crown and the States which derive therefrom. (The reason for this is that they all depended for their implementation on our part, on the continuance of the responsibility of Great Britain for the Government of India, and with the transfer of power to two Dominion Governments it would be impossible for the British Government to carry out these obligations.) An important element of those rights and obligations concerns the protection of the States against external aggression or internal subversive movement, and, the methods whereby the paramount power has in the past influenced the policy of the States so as to enable it and them to fulfil such undertakings. A feature running through all our relations with the States has been that the Crown has conducted their foreign relations. They have received no international recognition independent of India as a whole. With the ending of the treaties and agreements, the States regain their independence. But they are part of geographical India, and their rulers and peoples are imbued with a patriotism no less great than that of their fellow-Indians in British India. It would, I think, be unfortunate if, owing to the formal severance of their paramountcy relations with the Crown, they were to become islands cut off from the rest of India. The termination of their existing relationship with the Crown need have no such consequence. In fact, already a large number of States have declared their willingness to enter into relationships with the new Dominions and some have been represented in the Constituent Assembly of India. (It is the hope of His Majesty's Government that all States will, in due course, find their appropriate place within one or other of the new Dominions within the British Commonwealth, but until the constitutions of the Dominions have been framed in such a way as to include the States as willing

partners, there must necessarily be a less organic form of relationship between them, and there must be a period before a comprehensive system can be worked out. But, quite apart from the political relationship between the States and British India, there have grown up through the years financial and economic relations on such matters as posts and telegraphs, customs and communications which it would be disastrous to terminate immediately. The proviso in clause 7(1) is designed to secure the continuance of the existing arrangements in this field until there has been time for detailed negotiation between the parties. After the transfer of power, more detailed and binding arrangements will need to be concluded between the Dominions and the States Governments, and it may well be that these arrangements will, in their turn, be superseded by a more organic co-operation between the States and the Dominions. But these later arrangements will, of course, take time to work out, and the transition of the States from the lapse of paramountcy into a free association with the new Dominions is a process which will require proper discussion and deliberation."

Explaining the scope of the proviso to section 7(1), the Attorney-General made it clear that it did not contemplate military arrangements of any kind. The words "other like matters" occurring in it have to be construed *ejusdem generis* in relation to the words coming before, and they contemplate economic and financial matters. "Civil aviation may be one, roads may be another, but certainly matters of a military nature are not contemplated." With regard to the position of States which acceded to a Dominion which subsequently decided to secede from the British Commonwealth, the Attorney-General observed that it was a matter which depended entirely on the terms on which the State had acceded to the Dominion.

Section 7(1)(c) is related to paragraph 17 of the Frontier Tribes Statement made by His Majesty's Government on the 3rd June 1947, which said that agreements with tribes of the North-West Frontier of India would have to be negotiated by the appropriate successor authority. The effect of the provision is to leave it open to the new Dominions to initiate negotiations for fresh agreement with the



jirgas, or tribal assemblies, who are the treaty-making bodies empowered to enter into agreements on behalf of the tribes. These tribal areas were not part of British India. They were not administered by officers of the Government of India. Relations with them were governed in the past by a series of treaties and agreements which conferred jurisdiction in certain matters on the Crown. The termination of these agreements placed the tribes and the appropriate successor Government in a position of freedom to negotiate fresh agreements.

Section 7 (2) deals with the omission from the Royal Style and Titles of the words "India Imperator" and the words "Emperor of India". A change in the Royal Style and Titles is not a matter for the United Kingdom alone. As the Preamble to the Statute of Westminster makes clear, it concerns the other members of the British Commonwealth as well. For practical reasons, it has not been possible for such Parliamentary action as may be necessary to be taken in those other countries simultaneously. But the British Prime Minister informed his Parliament that as a result of consultation with the Prime Ministers concerned, he was authorised to state that the other Commonwealth Governments agreed to the proposed change in the Royal Style and Title and were prepared to take such steps as they considered necessary to obtain the consent of their Parliaments.

Another consequence of the setting up of the new Dominions is the disappearance of the India office in London. The British Prime Minister explained the position to the House of Commons as follows: "With the termination of all British control over the Indian sub-continent, the historic office of the Secretary of State for India will come to an end. The conduct of relations with India will fall within the sphere of the Secretary of State for Commonwealth Relations. For a transitional period there will, no doubt, be in relation to India and Pakistan a considerable volume of work, much of it of a winding-up character, which would not ordinarily fall within the range of the functions of the Secretary of State for Commonwealth Affairs. This will add considerably to his responsibilities, and in order to assist in this work, I am proposing to appoint a Minister of State for Commonwealth Relations. This will be one of the posts allowed under Section 2 of the Re-election of Ministers Act, 1919, as amended by the House of Commons Disqualification

Declaration of Law) Act, 1935, commonly called that of "Minister without Portfolio" There will, consequently, be no need for legislation<sup>1</sup>

As already stated, Section 8 makes temporary provision as to the government of each of the new Dominions. The Constituent Assembly in each Dominion is to exercise the power of legislation. Consequent on the decision to transfer power as from the 15th August 1947, it became necessary to provide for legislatures in the new Dominions as from the same date,

Provisional Government

and these legislatures besides having general legislative powers must also have constituent powers, that is to say, they

must be legislative bodies set up for the dual purpose of performing the ordinary functions of a parliament and of making constitutions. A solution had to be found to the problem of getting a parliament to work in the two Dominions where there were no constitutions actually in being and at the same time providing for the framing of the new constitutions. The solution which was found was one of adapting the existing Government of India Act to suit the new conditions as the basic constitution for the two new Dominions and giving the Constituent Assemblies the status of parliaments. The Government of India Act, 1935, as adapted, is to be the basic constitution on the first instance, until legislation is undertaken by the Constituent Assembly of each Dominion. The following statement made by the British Prime Minister at the Bill stage explains the whole position. "The Act of 1935 provided for a Central Legislature and Provincial Legislatures and for the division of powers between them. It is an immensely long and detailed Act, which, as some of us remember, took months of work in the framing, and in the preliminary consultations, and in passing through this House. It was designed for a united India. It now has to be adapted for the service of two Dominions. It contained many limitations on the powers of the Legislature, and gave, among other things, extensive powers to the Governor-General and to the Provincial Governors to act in their own discretion. The proviso in Clause 8 in effect sweeps away all these special powers and is intended to place the Governor-General and the Provincial Governors in the position of Dominion Governor-General, that is to say, they act only on the advice of their Ministers. Clause 3 protects the existing

<sup>1</sup> Parliamentary Debates (Hansard); H.C. 10th July 1947

position as between the Centre and the Provinces until other provision is made by a law passed by the Legislature. It will be realised that the intention is that when the new Dominion begins to function there should be in existence a body of law which can be amended by the Constituent Assemblies and subsequently by any legislatures that may be formed to take their place. I said that the Act of 1935 will be, in the first instance, until other action is taken, the basis of the new constitution, with necessary adaptations. Clause 9 sets out the machinery of adaptation. This is to be done by Order of the Governor-General. If Hon. Members will refer to Clause 19, the definition Clause, they will see that up to the appointed day, 15th August, the powers are exercisable by the Governor-General within the meaning of the Act of 1935, that is to say, by Lord Mountbatten, but after that date, where the Order or Act affects only one Dominion by the Governor-General of that Dominion, where it concerns both Dominions, by the two Governors-General acting jointly. I must admit that the powers given here are very wide. That is inevitable in the nature of the case. The Governor-General has to bring the Act into operation. He has to effect a division between the two Dominions, dividing the powers, rights, assets, property, liabilities, *et cetera*. I should like to mention here that the Indian leaders have agreed in principle in the setting up of an arbitral tribunal\*, to which should be referred any questions regarding the division of assets and liabilities on which the two Governments cannot reach agreement. But, besides these duties, the Governor-General has to make the adaptations required in the Government of India Act, 1935, in order to make it the new constitution for the time being. He has in particular the task of arranging during the transition period for the carrying out of services which are vital to the interests of both the new Dominions. The House will realise how great is the problem of dealing with such matters as railway and other communications, the reserve bank, the monetary and fiscal systems, and, of course, defence, to mention only the most obvious examples of those services which have hitherto been operated in the interests of the whole of India. Clearly, it must take time before the separate systems can be set up, and for definite agree-

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\* See the Arbitral Tribunal Order, 1947, an Order made by the Governor-General with effect from the 14th August 1947, in Part III.

ments to be made between the two Dominions. Provision must be made by some method—it may be by joint delegations from the two Dominions—for carrying out all these various activities during the transition period, and it is for this reason that such wide powers are given to the Governor-General. It would, of course, have simplified matters if the same person had held the position of Governor-General in both Dominions, but it has been decided otherwise. It is clear it can only be worked effectively by agreement between the two Governors-General. These powers of the Governors-General will come to an end on 31st March next, unless terminated earlier by the Dominion Legislatures. There is a similar, though rather smaller problem involved in the division of the Punjab, Bengal and possibly Assam. Accordingly, these powers are also given to the Governors of those Provinces, but only up to 15th August. I call attention to sub section (3). That gives retrospective effect as from 3rd June in order to cover action by the Governor-General and the Governors taken in anticipation of legislation. The House will realise that much has to be done in preparation which is not strictly within the 1935 Act. An important Order made by the Governor-General before the "appointed day" was the Executive Council (Transitional Provisions) Order, 1947.

Section 8 has to be read in relation to section 9 and section 18. The effect of this section on the Government of India Act 1935, is thus explained by the Attorney-General. "In substance the existing powers and constitution of the Provincial Legislatures will remain in being, and so may the powers, as distinct from the constitution, of the Central Legislature. What I have in mind particularly, therefore, is that what are called the "legislative lists" set out in Schedule Seven of the 1935 Act, which allocate certain subjects as being for the Central Legislature and assigning others to the Provincial ones, should continue until one or other of the Constituent Assemblies decides to alter them. So should also the provision with regard to the constitution and jurisdiction of the High Courts. This will go on and the Courts will continue to function until a Constituent Assembly or Legislature decides to alter them. Some of the modifications and adaptations of the 1935 Act are obvious and some are not. The more obvious ones are the subject of express provision in sub section (2) of the clause, and, for

the rest, the necessary modifications will be made by Order of the Governor General under the powers which are vested in the Governor-General under the subsequent Clauses of the Bill"

Section 9 sets out, accordingly, the machinery for adaptation of the existing law. It provides that the Governor-General shall by Order make such provision as appears to him to be necessary or expedient for the purposes indicated. It is in pursuance of this provision that the Governor-General has made a number of Orders (see Part III of the Book). Among the more important of them are the Provisional Constitution Order and the Provisional Constitution (Amendment) Orders, which have adapted the Government of India Act, 1935, to suit the new conditions which now exist. Extensive alterations and modifications have been effected in that Act. The Act as adapted is reproduced in Part II. More than a third of the original Act has been omitted, and among the Schedules to the Act, the first, second, eighth and ninth Schedules have been dropped. Among the provisions which have disappeared, mention may be made of those relating to reserved subjects in the Centre, special responsibilities of the Governor General and the Governors, superintendence of the Secretary of State, commercial discrimination, the power of the Crown to disallow Acts of Legislature, restrictions on legislative powers, Crown relations with States, Federal Railway Authority, Defence Services, Secretary of State's Services, the Secretary of State and his Advisers and the provisions in case of breakdown of the normal constitutional machinery.

Section 10 deals with the position of the services. The following statement of the Prime Minister made in the House of Commons explains the need for, and the scope of, the provision made in the Act:—"The House will recall that in the White Paper published last April His Majesty's Government made plain their position with regard to the Services, and all pledges then given by His Majesty's Government in the United Kingdom stand. It was then stated that the Government of India accepted liability for pension earned by service under the Secretary of State, whether by civilians or by members of the Defence Services. Clause 10, which has been inserted at the express request of the leaders of the Indian parties, provides for maintenance of the existing conditions of

service, as well as compensatory rights, in the case of those members of the Secretary of State's Services who continue to serve the Governments of the new Dominions. As regards persons who have been in Government Service, whether Central or Provincial, but whose service has not been specifically under the Secretary of State, I am happy to be able to announce now that the leaders of the Indian parties have guaranteed the existing terms and conditions of service to all their employees, including Europeans. This guarantee covers pensionary and provident fund liabilities and excludes any question of discrimination between Indian and non-Indian. But it cannot of course be regarded as an abandonment of the general right of any Government to revise the salaries of their servants from time to time."

Sections 11, 12 and 13 are of a technical nature. They make provision in regard to the Indian armed forces, the British forces in India, and the naval forces. The rest of the Act is devoted to incidental provisions of a general character. Explaining these provisions in the House of Commons, the Prime Minister stated as follows —

"There are some important matters which I should like to explain. Firstly, with regard to the partition of the Armed Forces. For the purpose of dealing with the question of partition there has been, since 7th June, a Partition Committee of the Interim Government consisting of two representatives of each of the two parties, with the Viceroy as the chairman, and a number of expert committees have been set up to work under this Partition Committee. This Committee's function was to examine the steps to be taken to set up machinery for carrying out the partition. It was really a fact-finding body, with the duty of making proposals and not of reaching final decisions. It was also decided that as soon as any one Province had declared in favour of joining a new and separate Constituent Assembly the Partition Committee should be replaced by a Partition Council. That Council should consist of two of the top-rank leaders of Congress and two of the Muslim League, with the Viceroy as chairman. This Council was set up on 27th June, and it was announced on 1st July that the Partition Council had reached agreement on the general principles to govern the reconstruction of the Armed

Forces The House will have seen that announcement and a very important agreement was arrived at. Until the division of the Forces is completed, and the two Dominion Governments are in a position to administer them, all existing Armed Forces in India will remain under the administrative control of the present Commander-in-Chief, who will, in turn, be under the Joint Defence Council, consisting of the Governor-General or Governors-General, the two Defence Ministers, and the Commander-in-Chief himself. There was a question about the two Governors-General, the original contemplation being one person holding both positions. It has been agreed that Lord Mountbatten should be the chairman of this Council. The Commander-in-Chief will have no responsibility for law and order, no operational control of any units, except during transit from one Dominion to another, nor any power to move troops within the borders of either Dominion. With regard to the British Forces in India at the transfer of power on 15th August, the British Armed Forces will immediately start to be withdrawn from India. This withdrawal will be carried out as rapidly as shipping permits, and is expected to be completed by about the end of this year. Clause 12 (1) declares that the British Army, the British Air Force and the Royal Navy when in Indian waters are under the direction and control of the United Kingdom Government and Service authorities. This, of course, is consistent with the Dominion status of India and Pakistan. Clause 12 (3) provides for the civil and military authorities continuing to offer the same facilities as heretofore for the British Army, pending their evacuation, and requires the Governor-General, by his orders to facilitate their evacuation. I should say that the phrase "and in the other territories" refers to the tribal areas and the States, and is intended to ensure that the Indian civil and military authorities extend to the British Forces whatever facilities they may secure for their own Forces in such territories. I will here refer to the Third Schedule, which sets out the modifications of the Army Act which have to be made for the British Army so long as it remains in India. The general principle of the modifications is to remove all powers of interference by the Governor-General and other civilian authorities in India with the internal affairs of the British Army in India, while preserving their powers and duties so far as they do not amount to interference of this kind. Clause 14 again is technical. It is essentially a transitional clause

dealing with the position of the Secretary of State and the Auditor of Indian Home Accounts. I will only note that under sub-section (3) the advisers of the Secretary of State provided for under the 1935 Act will now cease to function. Clause 15 is, I think, self-explanatory. Clause 16 confirms the separation of Aden from India, which was effected by Section 288 of the Government of India Act, 1935. I do not think the position with regard to divorce or as to existing laws requires any detailed explanation (sections 17 and 18)."

Section 18 deals with various legal matters of a consequential nature. It is self-explanatory. Attention may only be drawn to sub-section (4). It provides that the existing Instruments of Instruction to Governors and Governors-General lapse, and the power under the 1935 Act, under which those Instruments were issued, comes to an end. It would be improper for any Instruments of Instructions to be issued to the Governors and Governors-General in future, because they will be acting in all matters on the advice of their Ministers, and will have no responsibility to the Government in the United Kingdom.

The Dominion Constitution has come into operation from the 15th August 1947. The Government of India Act, 1935<sup>1</sup> has consequently been amended by the India (Provisional Constitution) Order, 1947. Section 2 of the Act, which provided for the government of India by the Crown, has been omitted. Section 3 provides for a Governor-General to be appointed by His Majesty by a Commission under the Royal Sign Manual. Section 5 provides for the establishment of the Dominion as from the 15th August 1947, which will be a Union comprising the Governors' Provinces, the Chief Commissioners' Provinces, the Acceding Indian States and any other areas that may, with the consent of the Dominion, be included in it. The previously existing definitions of "Indian State" and "Ruler" in the Act have now been omitted (s. 311). The omission is not without significance. Any territory may hereafter be recognised by the Dominion Government as a State for purposes of accession to the Union. The territorial limits of the Dominion of India are defined by the Independence Act itself (s. 2, 3 and 4). Section 6 provides for the accession of Indian States. An Indian State shall be deemed to have acceded to the Dominion



if the Governor-General has signified his acceptance of an Instrument of Accession executed by the ruler thereof. Provision is also made for supplementary Instruments of Accession to be executed by the rulers and accepted by the Governor-General. It will be noticed that the Independence Act itself makes no provision for the accession of Indian States to the Union. Having stated that paramountcy lapses from the 15th August 1947, and with it all treaties, agreements, obligations, etc., it leaves the matter there. As pointed out by the Viceroy in his speech on the 3rd June 1947, the position of States after the 15th August is a matter to be determined by negotiation and agreement between the Dominion Government on the one hand and the Rulers of the States on the other. The British Cabinet Delegation's statement regarding the States stands, and in accordance with its terms the Princes have generally agreed to accede to the Union on the three subjects specified therein, namely, defence, foreign affairs and communications. The position was made clear in a statement made by the Hon'ble the Home Member early in July last. He said "The States have already accepted the basic principle that for defence, foreign affairs and communications they would come into an Indian union. We ask no more of them than accession on these three subjects in which the common interests of the country are involved. In other matters, we would scrupulously respect their autonomous existence." Section 6 of the Act also provides that as soon as may be after any instrument of accession or supplementary instrument has been accepted by the Governor-General, copies of the Instrument and the Governor-General's acceptance thereof shall be laid before the Dominion Legislature and all courts shall take judicial notice of every such instrument and acceptance.

In the executive sphere important changes have already been made. The first noteworthy change is that in the position of the Governor-General. He has now become a constitutional head and acts only on the advice of the Ministry. Section 9 of the Act provides for a Council of Ministers to aid and advise the Governor-General in the exercise of all his functions. What was formerly known as the Executive Council of the Governor-General has now become the Cabinet consisting of 16 Ministers, and the old Departments of the Central Government are now re-named as Ministries. The Cabinet is a homogeneous

body of Ministers, collectively responsible for all governmental action. Sections 11 to 15 of the Act, relating to "reserved" subjects, special responsibilities of the Governor-General, instruments of instructions, superintendence of Secretary of State, and Financial Adviser to the Governor-General have been omitted.

Coming to the legislative sphere, the Constituent Legislature Assembly has become the Dominion Legislature, and it has two spheres of action, one constitution-making and the other legislation-making. There is a vast amount of legislative work awaiting it. The old Houses of Legislature, Legislative Assembly and Council of State, have become extinct. The restrictions which formerly existed on the powers of the legislature have been removed. The legislative powers of the Governor-General have also been removed, and power is conferred on him to promulgate Ordinances only in cases of emergency (new s.42). Section 45 of the Act, which provided for a breakdown of the constitutional machinery, has been omitted by the India (Provisional Constitution, Order, 1947).

So far as the central judiciary is concerned (s.200 to 218), no changes of substance have been made in regard to the position of the Federal Court, its powers, authority, and jurisdiction. The Federal Court Order, 1947, an Order made by the Governor-General, has kept alive the previously existing body. The Court remains, mainly a constitutional court, and the right of appeal to the Privy Council from its decisions is retained (s.203). The old three fold jurisdiction of the Court, namely, original, appellate and advisory, continues as before. Power is given to the Dominion Legislature to enlarge its civil appellate jurisdiction. If the Court's jurisdiction is so enlarged, the Dominion Legislature may provide by Act for the abolition in whole or in part of direct appeals in civil cases from High Courts to His Majesty in Council, either with or without special leave (s.206). Geographically, there has of necessity, come about a curtailment of the jurisdiction of the Court, consequent on the division of the country into two Dominions and the decision to set up a separate Court for Pakistan, but the accession of the States to the Union of India may tend to increase its jurisdiction and add to its importance. It is for the Dominion Legislature to

decide as to what the future set up of the central judiciary will be

In the Provinces, consequential changes have taken place. The governmental set up is on the same lines as in the Union, namely, a constitutional Governor as the head, Ministers to aid and advise him in all his functions, joint responsibility of the Ministry as a whole to the Legislature, homogeneity of the Cabinet, <sup>The Provinces</sup> supremacy of the Legislature within the field marked out for it, and the judiciary, at the head of which is the High Court, functioning within its own sphere. The provisions relating to the special responsibilities of the Governor have been omitted, the previously existing provision for a breakdown of the constitution (s 93) has been omitted, and the legislative powers of the Governor have disappeared. He is however given the power to make Ordinances when the Legislature is not in session. The distribution of legislative powers between the Provinces and the Union remains the same as before.

The Chief Commissioners' Provinces comprised in the Union are Delhi, Ameer-Merwara, Coorg, Andaman and Nicobar Islands, the area known as Panth Piploda and such other Chief Commissioner's Provinces as may be created under the Act. A Chief Commissioner's Province is to be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner appointed by him.

The present Constitution is, by its very nature, a provisional one. A new and permanent Constitution will be established sooner or later, and, to that end, the Constituent Assembly in its capacity as a Constitution-making body has been at work from December 1946. That Constitution is still in the making. It is not our purpose to deal with it here.

## PART I

### The Indian Independence Act, 1947.

A study of the present constitutional position of the country should begin with the Indian Independence Act, 1947 (10 & 11 Geo 6), an enactment of the Parliament of the United Kingdom, dated the 18th July 1947. The avowed object of that Act is to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions. With the establishment of the two Dominions as from the 15th of August 1947, His Majesty's Government in the United Kingdom have no responsibility as respects the Government of any of the territories comprised in the Dominions, and the suzerainty of His Majesty over the Indian States has lapsed.

The following is the arrangement of the Sections of the Act —

- 1 The new Dominions
- 2 Territories of the new Dominions
- 3 Bengal and Assam
- 4 The Punjab
- 5 The Governor-General of the new Dominions
- 6 Legislation for the new Dominions
- 7 Consequences of the setting up of the new Dominions

*Constitution of Dominion of India*

- 8 Temporary provision as to government of each of the new Dominions
- 9 Orders for bringing this Act into force
- 10 Secretary of State's services, etc
- 11 Indian armed forces
- 12 British forces in India
- 13 Naval forces
- 14 Provisions as to the Secretary of State and the Auditor of Indian Home Accounts
- 15 Legal proceedings by and against the Secretary of State
- 16 Aden
- 17 Divorce jurisdiction
- 18 Provisions as to existing laws, etc
- 19 Interpretation, etc.
- 20 Short title

**Schedules**

**First Schedule** —Bengal Districts provisionally included in the new Province of East Bengal

**Second Schedule** —Districts provisionally included in the new Province of West Punjab

**Third Schedule** —Modifications of Army Act and Air Force Act in relation to British forces

## **The Indian Independence Act 1947**

**1 The new Dominions**—(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan

(2) The said Dominions are hereafter in this Act referred to as "the new Dominions", and the said fifteenth day of August is hereafter in this Act referred to as "the appointed day"

**2, Territories of the new Dominions**—(1) Subject to the provisions of sub-sections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under sub-section (2) of this section, are to be the territories of Pakistan

(2) Subject to the provisions of sub-sections (3) and (4) of this section, the territories of Pakistan shall be—

- (a) the territories which, on the appointed day, are included in the Provinces of East Bengal and West Punjab, as constituted, under the two following sections,
- (b) the territories which, at the date the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan, and
- (c) if, whether before or after the passing of this Act but before the appointed day the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North-West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province

(3) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that—

(a) no area not forming part of the territories specified in sub-section (1) or as the case may be, sub-section (2) of this section shall be included in either Dominion without the consent of that Dominion and

(b) no area which forms part of the territories specified in the said sub-section (1) or as the case may be the said sub-section (2), or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion

(4) Without prejudice to the generality of the provisions of sub-section (3) of this section nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions

**3 Bengal and Assam**—(1) As from the appointed day—

(a) the Province of Bengal as constituted under the Government of India Act, 1935 shall cease to exist and

(b) there shall be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal

(2) If, whether before or after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the District of Sylhet are in favour of that District forming part of the new Province of East Bengal, then, as from that day a part of the Province of Assam shall in accordance with the provisions of sub-section (3) of this section, form part of the new Province of East Bengal

(3) The boundaries of the new Provinces aforesaid and in the event mentioned in sub-section (2) of this section, the boundaries after the appointed day of the Province of Assam shall be such as may be determined whether before or after the appointed day by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined

(a) the Bengal Districts specified in the First Schedule to this Act, together with, in the event mentioned

in sub-section (2) of this section the Assam District of Sylhet, shall be treated as the territories which are to be comprised in the new Province of East Bengal ,

(b) the remainder of the territories comprised at the date of the passing of this Act in the Province of Bengal shall be treated as the territories which are to be comprised in the new Province of West Bengal , and

(c) in the event mentioned in sub-section (2) of this section, the district of Sylhet shall be excluded from the Province of Assam

(4) In this section, the expression 'award' means, in relation to a boundary commission, the decision, of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings

**4 The Punjab —(1) As from the appointed day—**

(a) the Province of the Punjab, as constituted under the Government of India Act, 1935, shall cease to exist ,  
' and

(b) there shall be constituted two new Provinces, to be known respectively as West Punjab and East Punjab

(2) The boundaries of the said new Provinces shall be such as may be determined whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined—

(a) the Districts specified in the Second Schedule to this Act shall be treated as the territories to be comprised in the new Province of West Punjab , and

(b) the remainder of the territories comprised at the date of the passing of this Act in the Province of the Punjab shall be treated as the territories which are to be comprised in the new Province of East Punjab



(3) In this section, the expression "award" means, in relation to a boundary commission, the decision of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings

#### 5. The Governor-General of the new Dominions —

For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty for the purposes of the government of the Dominion

Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be Governor-General of both the new Dominions

6 Legislation for the new Dominions—(1) The Legislature of each of the new Dominions shall have full power to make laws for that Dominion, including laws having extra-territorial operation

(2) No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order rule or regulation made under any such Act and the powers of the Legislature of each Dominion include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the Dominion

(3) The Governor-General of each of the new Dominions shall have full power to assent in His Majesty's name to any law of the Legislature of that Dominion and so much of any Act as relates to the disallowance of laws by His Majesty or the reservation of laws for the signification of His Majesty's pleasure thereon or the suspension of the operation of laws until the signification of His Majesty's pleasure thereon shall not apply to laws of the Legislature of either of the new Dominions

(4) No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to either of the new Dominions as part

of the law of the Dominion unless it is extended thereto by a law of the Legislature of the Dominion .

(5) No Order in Council made on or after the appointed day under any Act passed before the appointed day, and no order, rule or other instrument made on or after the appointed day under any such Act by any United Kingdom Minister or other authority, shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion

(6) The power referred to in subsection (1) of this section extends to the making of laws limiting for the future the powers of the Legislature of the Dominion:

**7 Consequences of the setting up of the new Dominions —(1) As from the appointed day—**

- (a) His Majesty's Government in the United Kingdom, have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India ,
- (b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date, or in relation to Indian States by treaty, grant, usage, sufferance or otherwise , and
- (c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this sub-section, effect shall, as

nearly as may be continue to be given to the provisions of any such agreement as is therein referred to which relate to to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words "India's Emperor" and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm

**8 Temporary provision as to government of each of the new Dominions—**(1) In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly

(2) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under sub-section (1) of this section, each of the new Dominions, and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935, and the provisions of that Act, and of the Orders in Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly

Provided that—

(a) the said provisions shall apply separately in relation to each of the new Dominions, and nothing in this sub-section shall be construed as continuing on or after the appointed day any Central Government or Legislature common to both the new Dominions

- (b) nothing in this sub-section shall be construed as continuing in force on or after the appointed day any form of control by His Majesty's Government in the United Kingdom over the affairs of the new Dominions or of any Province or other part thereof
  - (c) so much of the said provisions as requires the Governor-General or any Governor to act in his discretion or exercise his individual judgment as respects any matter shall cease to have effect as from the appointed day,
  - (d) as from the appointed day, no Provincial Bill shall be reserved under the Government of India Act, 1935, for the signification of His Majesty's pleasure, and no Provincial Act shall be disallowed by His Majesty thereunder, and
  - (e) the powers of the Federal Legislature or Indian Legislature under that Act, as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion, in addition to the powers exercisable by that Assembly under sub-section (1) of this section
- (3) Any provision of the Government of India Act, 1935, which, as applied to either of the new Dominions by sub-section (2) of this section and the orders therein referred to, operates to limit the legislature of that Dominion shall, unless and until other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion in accordance with the provisions of sub-section (1) of this section, have the like effect as a law of the Legislature of the Dominion limiting for the future the powers of that Legislature

**9 Orders for bringing this Act into force** - (1) The Governor-General shall by order make such provision as appears to him to be necessary or expedient—

- (a) for bringing the provisions of this Act into effective operation,
- (b) for dividing between the new Dominions, and between the new Provinces, to be constituted under this Act, the powers, rights, property, duties and liabilities of the Governor-General in Council or, as the case may be, of the relevant Provinces which, under this Act, are to cease to exist,

- (c) for making omissions from, additions to, and adaptations and modifications of, the Government of India Act, 1935, and the Orders in Council, rules and other instruments made thereunder, in their application to the separate new Dominions ,
- (d) for removing difficulties arising in connection with the transition to the provisions of this Act
- (e) for authorizing the carrying on of the business of the Governor-General in Council between the passing of this Act and the appointed day otherwise than in accordance with the provisions in that behalf of the Ninth Schedule to the Government of India Act, 1935 ,
- (f) for enabling agreements to be entered into, and other acts done, on behalf of either of the new Dominions before the appointed day ,
- (g) for authorising the continued carrying on for the time being on behalf of the new Dominions, or on behalf of any two or more of the said new Provinces, of services and activities previously carried on on behalf of British India as a whole or on behalf of the former Provinces which those new Provinces represent ,
- (h) for regulating the monetary system and any matters pertaining to the Reserve Bank of India , and
- (i) so far as it appears necessary or expedient in connection with any of the matters aforesaid, for varying the constitution, powers or jurisdiction of any legislature, court or other authority in the new Dominions and creating new legislatures, courts or other authorities therein

(2) The powers conferred by this section on the Governor-General shall, in relation to their respective Provinces, be exercisable also by the Governors of the Provinces which, under this Act, are to cease to exist , and those powers shall, for the purposes of the Government of India Act, 1935, be deemed to be matters as respects which the Governors are, under that Act, to exercise their individual judgment

(3) This section shall be deemed to have had effect as from the third day of June, nineteen hundred and forty-seven

and any order of the Governor-General or any Governor made on or after that date as to any matter shall have effect accordingly, and any order made under this section may be made so as to be retrospective to any date not earlier than the said third day of June

Provided that no person shall be deemed to be guilty of an offence by reason of so much of any such order as makes any provision thereof retrospective to any date before the making thereof

(4) Any orders made under this section, whether before or after the appointed day shall have effect—

- (a) up to the appointed day, in British India,
- (b) on and after the appointed day, in the new Dominion or Dominions concerned, and
- (c) outside British India, or as the case may be, outside the new Dominion or Dominions concerned, to such extent, whether before, on or after the appointed day, as a law of the Legislature of the Dominion or Dominions concerned would have on or after the appointed day,

but shall, in the case of each of the Dominions, be subject to the same powers of repeal and amendment as laws of the Legislature of that Dominion

(5) No order shall be made under this section, by the Governor of any Province, after the appointed day, or by the Governor-General, after the thirty-first day of March nineteen hundred and forty-eight, or such earlier date as may be determined, in the case of either Dominion, by any law of the Legislature of that Dominion

(6) If it appears that a part of the Province of Assam is, on the appointed day, to become part of the new Province of East Bengal, the preceding provisions of this section shall have effect as if, under this Act the Province of Assam was to cease to exist on the appointed day and be reconstituted on that day as a new Province

**10 Secretary of State's services, etc.**—(1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State or the provisions of that Act relating to the reservation of posts

(2) Every person who—

(a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof, or

(b) having been appointed by His Majesty before the appointed day to be a Judge of the Federal Court or of any Court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions,

shall be entitled to receive from the Government of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before the appointed day

(3) Nothing in this Act shall be construed as enabling the rights and liabilities of any person with respect to the family pension funds vested in Commissioners under section two hundred and seventy-three of the Government of India Act, 1935, to be governed otherwise than by Orders in Council made (whether before or after the passing of this Act or the appointed day) by His Majesty in Council and rules made (whether before or after the passing of this Act or the appointed day) by a Secretary of State or such other Minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946

**11 Indian armed forces—**(1) The orders to be made by the Governor-General under the preceding provisions of this Act shall make provision for the division of the Indian armed forces of His Majesty between the new Dominions, and for the command and governance of those forces until the division is completed

(2) As from the appointed day, while any member of His Majesty's forces, other than His Majesty's Indian forces, is

attached to or serving with any of His Majesty's Indian forces

- (a) he shall, subject to any provision to the contrary made by a law of the Legislature of the Dominion or Dominions concerned or by any order of the Governor-General under the preceding provisions of this Act, have, in relation to the Indian forces in question, the powers of command and punishment appropriate to his rank and functions, but
- (b) nothing in any enactment in force at the date of the passing of this Act shall render him subject in any way to the law governing the Indian forces in question.

**12 British forces in India**—(1) Nothing in this Act affects the jurisdiction or authority of His Majesty's Government in the United Kingdom or of the Admiralty, the Army Council, or the Air Council or of any other United Kingdom authority, in relation to any of His Majesty's forces which may on or after the appointed day, be in either of the new Dominions or elsewhere in the territories which before the appointed day, were included in India not being Indian forces

(2) In its application in relation to His Majesty's military forces, other than Indian forces the Army Act shall have effect on or after the appointed day—

- (a) as if His Majesty's Indian forces were not included in the expressions "the forces" "His Majesty's forces" and "the regular forces", and
- (b) subject to the further modifications specified in Parts I and II of the Third Schedule to this Act

(3) Subject to the provisions of sub-section (2) of this section, and to any provisions of any law of the Legislature of the Dominion concerned, all civil authorities in the new Dominions, and, subject as aforesaid and subject also to the provisions of the last preceding section, all service authorities in the new Dominions, shall, in those Dominions and in the other territories which were included in India before the appointed day, perform in relation to His Majesty's military forces, not being Indian forces the same functions as were before the appointed day performed by them, or by the authorities corresponding to them, whether by virtue of the



Army Act or otherwise, and the matters for which provision is to be made by orders of the Governor-General under the preceding provisions of this Act shall include the facilitating of the withdrawal from the new Dominions and other territories aforesaid of His Majesty's military forces, not being Indian forces

(4) The provisions of sub-sections (2) and (3) of this section shall apply in relation to the air forces of His Majesty, not being Indian air forces, as they apply in relation to His Majesty's military forces, subject, however to the necessary adaptations, and, in particular, as if

- (a) for the references to the Army Act there were substituted references to the Air Force Act, and
- (b) for the reference to Part II of the Third Schedule to this Act there were substituted a reference to Part III, of that Schedule

**13 Naval Forces** —(1) In the application of the Naval Discipline Act to His Majesty's Naval Forces, other than Indian Naval forces, references to His Majesty's navy and His Majesty's ships shall not, as from the appointed day, include references to His Majesty's Indian navy or the ships thereof

(2) In the application of the Naval Discipline Act by virtue of any law made in India before the appointed day to Indian naval forces, references to His Majesty's navy and His Majesty's ships shall, as from the appointed day, be deemed to be and to be only, references to His Majesty's Indian navy and the ships thereof.

(3) In section ninety B of the Naval Discipline Act (which, in certain cases, subjects officers and men of the Royal Navy and Royal Marines to the law and customs of the ships and naval forces of other parts of His Majesty's dominions) the words "or of India" shall be repealed as from the appointed day, wherever those words occur

**14 Provisions as to the Secretary of State and the Auditor of Indian Home Accounts** —(1) A Secretary of State or such other Minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946, is hereby authorised to continue for the time being the performance, on behalf of whatever government or governments may be concerned, functions as to the making of payments and

other matters similar to the functions which, up to the appointed day, the Secretary of State was performing on behalf of governments constituted or continued under the Government of India Act, 1935

(2) The functions referred to in sub-section (1) of this section include functions as respects the management of, and the making of payments in respect of, government debt, and any enactments relating to such debt shall have effect accordingly

Provided that nothing in this sub-section shall be construed as continuing in force so much of any enactment as empowers the Secretary of State to contract sterling loans on behalf of any such Government as aforesaid or as applying to the Government of either of the new Dominions the prohibition imposed on the Governor-General in Council by section three hundred and fifteen of the Government of India Act, 1935, as respects the contracting of sterling loans

(3) As from the appointed day, there shall not be any such advisers of the Secretary of State as are provided for by section two hundred and seventy-eight of the Government of India Act, 1935, and that section, and any provisions of that Act which require the Secretary of State to obtain the concurrence of his advisers, are hereby repealed as from that day

(4) The Auditor of Indian Home Accounts is hereby authorised to continue for the time being to exercise his functions as respects the accounts of the Secretary of State or any such other Minister of the Crown as is mentioned in sub-section (1) of this section, both in respect of activities before, and in respect of activities after, the appointed day in the same manner, as nearly as may be as he would have done if this Act had not been passed

**15 Legal proceedings by and against the Secretary of State**—(1) Notwithstanding anything in this Act, and in particular, notwithstanding any of the provisions of the last preceding section, any provision of any enactment, which, but for the passing of this Act, would authorise legal proceedings to be taken in India or elsewhere by or against the Secretary of State in respect of any right or liability of India or any part of India shall cease to have effect on the appointed day, and any legal proceedings pending by virtue of any such provi-

sion on the appointed day shall, by virtue of this Act, abate on the appointed day, so far as the Secretary of State is concerned

(2) Subject to the provisions of this sub-section any legal proceedings which but for the passing of this Act could have been brought by or against the Secretary of State in respect of any right or liability of India, or any part of India shall instead be brought --

(a) in the case of proceedings in the United Kingdom by or against the High Commissioner

(b) in the case of other proceedings by or against such person as may be designated by order of the Governor-General under the preceding provisions of this Act or otherwise by the law of the new Dominion concerned,

and any legal proceedings by or against the Secretary of State in respect of any such right or liability as aforesaid which are pending immediately before the appointed day shall be continued by or against the High Commissioner or, as the case may be, the person designated as aforesaid;

Provided that, at any time after the appointed day, the right conferred by this sub-section to bring or continue proceedings may, whether the proceedings are by, or are against, the High Commissioner or person designated as aforesaid, be withdrawn by a law of the Legislature of either of the new Dominions so far as that Dominion is concerned, and any such law may operate as respects proceedings pending at the date of the passing of the law

(3) In this section, the expression "the High Commissioner" means, in relation to each of the new Dominions any such officer as may for the time being be authorised to perform in the United Kingdom, in relation to that Dominion functions similar to those performed before the appointed day, in relation to the Governor-General in Council by the High Commissioner referred to in section three hundred and two of the Government of India Act 1935, and any legal proceedings which, immediately before the appointed day, are the subject of an appeal to His Majesty in Council, or of a petition for special leave to appeal

His Majesty in Council, shall be treated for the purposes of this section as legal proceedings pending in the United Kingdom

**16 Aden**—(1) Sub-sections (2) to (4) of section two hundred and eighty-eight of the Government of India Act, 1935 (which confer on His Majesty power to make by Order in Council provision for the government of Aden) shall cease to have effect and the British Settlements Acts, 1887 and 1945, (which authorise His Majesty to make laws and establish institutions for British Settlements as defined in those Acts) shall apply in relation to Aden as if it were a British Settlement as so defined

(2) Notwithstanding the repeal of the said sub-sections (2) to (4), the Orders in Council in force thereunder at the date of the passing of this Act shall ~~continue in force~~, but the said Orders in Council, any other Orders in Council made under the Government of India Act, 1935, in so far as they apply to Aden, and any enactments applied to Aden or amended in relation to Aden by any such Orders in Council as aforesaid, may be repealed, revoked or amended under the powers of the British Settlements Acts, 1887 and 1945

(3) Unless and until provision to the contrary is made as respects Aden under the powers of the British Settlements Acts, 1887 and 1945, or, as respects the new Dominion in question, by a law of the Legislature of that Dominion, the provisions of the said Orders in Council and enactments relating to appeals from any courts in Aden to any courts which will, after the appointed day, be in either of the new Dominions, shall continue in force in their application both to Aden and to the Dominion in question, and the last mentioned courts shall exercise their jurisdiction accordingly.

**17 Divorce jurisdiction**—(1) No court in either of the new Dominions shall by virtue of the Indian and Colonial Divorce Jurisdiction Acts 1926 and 1940, have jurisdiction in or in relation to any proceedings for the dissolution of a marriage unless those proceedings were instituted before the appointed day, but, save as aforesaid and subject to any provision to the contrary which may hereafter be made by any Act of the Parliament of the United Kingdom or by any law of the Legislature of the new Dominion concerned, all courts in the new Dominions shall have the same jurisdiction under

the said Acts as they would have had if this Act had not been passed

(2) Any rules made on or after the appointed day under sub-section (4) of section one of the Indian and Colonial Divorce Jurisdiction Act, 1926, for a court in either of the new Dominions shall, instead of being made by the Secretary of State with the concurrence of the Lord Chancellor, be made by such authority as may be determined by the law of the Dominion concerned and so much of the said sub-section and of any rules in force thereunder immediately before the appointed day as require the approval of the Lord Chancellor to the nomination for any purpose of any judges of any such court shall cease to have effect,

(3) The reference in sub-section (1) of this section to proceedings for a decree for the dissolution of a marriage include references to proceedings for such a decree of presumption of death and dissolution of a marriage as is authorised by section eight of the Matrimonial Causes Act, 1937

(4) Nothing in this section affects any court outside the new Dominions, and the power conferred by section two of the Indian and Colonial Divorce Jurisdiction Act, 1926, to apply certain provisions of that Act to other parts of His Majesty's dominions as they apply to India shall be deemed to be power to apply those provisions as they would have applied to India if this Act had not been passed

**18 Provisions as to existing laws, etc**—(1) In so far as any Act of Parliament, Order in Council, order, rule, regulation or other instrument passed or made before the appointed day operates otherwise than as part of the law of British India or the new Dominions references therein to India or British India, however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter may require

Provided that nothing in this sub-section shall be construed as continuing in operation any provision in so far as the continuance thereof as adapted by this sub-section is inconsistent with any of the provisions of this Act other than this section.

(2) Subject to the provisions of sub-section (1) of this section and to any other express provision of this Act, the Orders in Council made under sub-section (5) of section three hundred and eleven of the Government of India Act, 1935, for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than as part of the law of British India or the new Dominions

(3) Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf

(4) It is hereby declared that the Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor General and the Governors of Provinces lapse as from the appointed day, and nothing in this Act shall be construed as continuing in force any provision of the Government of India Act, 1935, relating to such Instruments of Instructions

(5) As from the appointed day, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the new Dominions

**19 Interpretation, etc —**(1) References in this Act to the Governor-General shall, in relation to any order to be made or other act done on or after the appointed day, be construed—

- (a) where the order or other act concerns one only of the new Dominions, as references to the Governor-General of that Dominion,
- (b) where the order or other act concerns both of the new Dominions and the same person is the Governor-General of both those Dominions, as references to that person, and
- (c) in any other case, as references to the Governor-General of the new Dominions, acting jointly;

(2) References in this Act to the Governor-General shall, in relation to any order to be made or other act done before the appointed day, be construed as references to the Governor-General of India within the meaning of the Government of India Act, 1935, and so much of that or any other Act as requires references to the Governor-General to be construed as references to the Governor-General in Council shall not apply to references to the Governor-General in this Act

(3) References in this Act to the Constituent Assembly of a Dominion shall be construed as references—

(a) in relation to India, to the Constituent Assembly, the first sitting whereof was held on the ninth day of December, nineteen hundred and forty-six, modified—

(i) by the exclusion of the members representing Bengal, the Punjab, Sind and British Baluchistan and

(ii) should it appear that the North-West Frontier Province will form part of Pakistan, by the exclusion of the members representing that Province and

(iii) by the inclusion of members representing West Bengal and East Punjab, and

(iv) should it appear that, on the appointed day, a part of the Province of Assam is to form part of the new Province of East Bengal, by the exclusion of the members theretofore representing the Province of Assam, and the inclusion of members chosen to represent the remainder of that Province ;<sup>b</sup>

(b) in relation to Pakistan, to the Assembly set up or about to be set up at the date of the passing of this Act under the authority of the Governor-General as the Constituent Assembly for Pakistan

Provided that nothing in this sub-section shall be construed as affecting the extent to which representatives of the Indian States take part in either of the said Assemblies, or as preventing the filling of casual vacancies in the said Assemblies, or as preventing the participation in either of the said Assemblies in accordance with such arrangements as may be made

in that behalf, of representatives of the tribal areas on the borders of the Dominion for which that Assembly sits, and the powers of the said Assemblies shall extend, and be deemed always to have extended, to the making of provision for the matters specified in this proviso

(4) In this Act, except so far as the context otherwise requires—

References to the Government of India Act, 1935, include references to any enactments amending or supplementing that Act, and in particular, references to the India (Central Government and Legislature) Act, 1946

"India", where the reference is to a state of affairs existing before the appointed day or which would have existed but for the passing of this Act, has the meaning assigned to it by section three hundred and eleven of the Government of India Act, 1935,

"Indian forces" includes all His Majesty's Indian forces existing before the appointed day and also  
\* any forces of either of the new Dominions,

"Pension" means, in relation to any person, a pension, whether contributory or not, of any kind whatsoever payable to or in respect of that person; and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or other additions thereto, of subscriptions to a provident fund,

"Province" means a Governor's Province,

"remuneration" includes leave pay, allowances and the cost of any privileges or facilities provided in kind

(5) Any power conferred by this Act to make any order includes power to revoke or vary any order previously made in the exercise of that power

**20 Short title**—This Act may be cited as the Indian Independence Act 1947



**SCHEDULES****FIRST SCHEDULE****Section 3****BENGAL DISTRICTS PROVISIONALLY INCLUDED IN THE NEW  
PROVINCE OF EAST BENGAL**

In the Chittagong Division, the Districts of Chittagong,  
- Noakhali and Tippera

In the Dacca Division, the districts of Bakarganj, Dacca,  
Faridpur and Mymensingh

In the Presidency Division, the districts of Jessore,  
Murshidabad and Nadia

In the Rajshahi Division, the districts of Bogra, Dinajpur,  
Malda, Pabna, Rajshahi and Rangpur

— — —

**SECOND SCHEDULE****Section 4****DISTRICTS PROVISIONALLY INCLUDED IN THE NEW PROVINCE OF  
WEST PUNJAB**

In the Lahore Division, the districts of Gujranwala,  
Gurdaspur, Lahore, Sheikhupura and Sialkot

In the Rawalpindi Division, the districts of Attock,  
Gujrat, Jhelum, Mianwali, Rawalpindi and Shahpur

In the Multan Division, the districts of Dera Ghazi Khan,  
Jhang, Lyallpur, Montgomery, Multan and Muzaffargarh

THIRD SCHEDULE

Section 12

MODIFICATIONS OF ARMY ACT AND AIR FORCE ACT IN  
RELATION TO BRITISH FORCES

PART I

*Modifications of Army Act applicable also to Air  
Force Act*

1. The proviso to section forty-one (which limits the jurisdiction of courts martial) shall not apply to offences committed in either of the new Dominions or in any of the other territories which were included in India before the appointed day

2 In section forty-three (which relates to complaints), the words "with the approval of the Governor-General of India in Council" shall be omitted

3 In sub-sections (8) and (9) of section fifty-four (which, amongst other things, require certain sentences to be confirmed by the Governor General in Council) the words "India or", the words "by the Governor-General, or, as the case may be" and the words "In India, by the Governor-General, or, if he has been tried" shall be omitted

4 In sub-section (3) of section seventy-three (which provides for the nomination of officers with power to dispense with courts martial for desertion and fraudulent enlistment) the words "with the approval of the Governor-General" shall be omitted

5 The powers conferred by sub-section (5) of section one hundred and thirty (which provides for the removal of insane persons) shall not be exercised except with the consent of the officer commanding the forces in the new Dominions

6 In sub-section (2) of section one hundred and thirty-two (which relates to rules regulating service prisons and detention barracks) the words "and in India for the Governor-General" and the words "the Governor-General" shall be omitted except as respects rules made before the appointed day

7 In the cases specified in sub-section (1) of section one hundred and thirty-four, inquests shall be held in all cases in accordance with the provisions of sub-section (3) of that section

8 In section one hundred and thirty-six (which relates to deductions from pay), in sub-section (1) the words "India or" and the words "being in the case of India a law of the Indian legislature", and the whole of sub-section (2) shall be omitted

9. In paragraph (4) of section one hundred and thirty-seven (which relates to penal stoppages from the ordinary pay of officers), the words "or in the case of officers serving in India the Governor-General" the words "India or" and the words "for India or as the case may be" shall be omitted

10. In paragraph (12) of section one hundred and seventy-five and paragraph (11) of section one hundred and seventy-six (which apply the Act to certain members of His Majesty's Indian Forces and to certain other persons) the word "Indian" shall be omitted wherever it occurs

11. In sub-section (1) of section one hundred and eighty (which provides for the punishment of misconduct by civilians in relation to courts martial) the words "India or" shall be omitted wherever they occur

12 In the provisions of section one hundred and eighty-three relating to the reduction in rank of non-commissioned officers, the words "with the approval of the Governor-General" shall be omitted in both places where they occur

#### **PART IV**

#### *Modifications of Army Act*

Section 184B (which regulates relations with the Indian Air Force) shall be omitted

#### **PART III**

#### *Modifications of Air Force Act*

1 In section 179D (which relates to the attachment of officers and airmen to Indian and Burma Air Forces), the words "by the Air Council and the Governor General

India, or, as the case may be", and the words "India or", wherever those words occur, shall be omitted.

2. In section 184B (which regulates relations with Indian and Burma Air Forces) the words "India or" and the words "by the Air Council and the Governor-General of India or, as the case may be" shall be omitted.

3. Sub-paragraph (e) of paragraph (4) of section one hundred and ninety (which provides that officers of His Majesty's Indian Air Force are to be officers within the meaning of the Act) shall be omitted.

## REPORT OF THE BENGAL BOUNDARY COMMISSION \*

To

HIS EXCELLENCY THE GOVERNOR-GENERAL

1- I have the honour to present the decision and award of the Bengal Boundary Commission, which, by virtue of section 3 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission. This award relates to the division of the Province of Bengal and the Commission's award in respect of the District of Sylhet and areas adjoining thereto will be recorded in a separate report

2 The Bengal Boundary Commission was constituted by the announcement of the Governor-General, dated the 30th of June, 1947, Reference No D50/7/47—R. The members of the Commission thereby appointed were—

Mr Justice Bijan Kumar Mukherjea, \*

Mr Justice C C Biswas,

Mr Justice Abu Saleb Mohamed Akram, and

Mr Justice S A Rahman

I was subsequently appointed Chairman of this Commission

3 The terms of reference of the Commission as set out in the announcement, were as follows —

"The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous areas of Muslims and non-Muslims. In doing so, it will also take into account other factors."

We were desired to arrive at a decision as soon as possible before the 15th of August

\* Gazette of India Extraordinary dated August 17th, 1947—Legislative Department Notification No F 68/47—R

4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. A very large number of memoranda and representations was received.

5. The public sittings of the Commission took place at Calcutta, and extended from Wednesday the 16th of July 1947, to Thursday the 24th of July 1947, inclusive, with the exception of Sunday, the 20th of July. Arguments were presented to the Commission by numerous parties on both sides, but the main cases were presented by counsel on behalf of the Indian National Congress, the Bengal Provincial Hindu Mahasabha and the New Bengal Association on the one hand, and on behalf of the Muslim League on the other. In view of the fact that I was acting also as Chairman of the Punjab Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Bengal Boundary Commission, I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and all material submitted for our consideration.

6. After the close of the public sittings the remainder of the time of the Commission was devoted to clarification and discussion of the issues involved. Our discussions took place at Calcutta.

7. The question of drawing a satisfactory boundary line under our terms of reference between East and West Bengal was one to which the parties concerned propounded the most diverse solutions. The province offers few, if any, satisfactory natural boundaries, and, its development has been on lines that do not well accord with a division by contiguous majority areas of Muslim and non-Muslim majorities.

8. In my view, the demarcation of a boundary line between East and West Bengal depended on the answers to be given to certain basic questions which may be stated as follows —

(1) To which State was the City of Calcutta to be assigned, or was it possible to adopt any method of dividing the City between the two States?

(2) If the City of Calcutta must be assigned as a whole to one or other of the States, what were its indispensable claims to the control of territory, such as all or part of the Nadia River system or the Kulpi rivers, upon which the life of Calcutta as a city and port depended?

(3) Could the attractions of the Ganges-Padma-Madhumati river line displace the strong claims of the heavy concentration of Muslim majorities in the districts of Jessore and Nadia without doing too great a violence to the principle of our terms of reference ?

(4) Could the district of Khulna usefully be held by State different from that which held the district of Jessore ?

(5) Was it right to assign to Eastern Bengal the considerable block of non-Muslim majorities in the districts of Malda and Dinajpur ?

(6) Which State's claim ought to prevail in respect of the Districts of Darjeeling and Jalpaiguri, in which the Muslim population amounted to 2.42 per cent of the whole in the case of Darjeeling, and to 23.08 per cent of the whole in the case of Jalpaiguri, but which constituted an area not in any natural sense contiguous to another non-Muslim area of Bengal ?

(7) To which State should the Chittagong Hill Tracts be assigned, an area in which the Muslim population was only 3 per cent of the whole, but which it was difficult to assign to a State different from that which controlled the district of Chittagong itself ?

9 After a much discussion, my colleagues found that they were unable to arrive at an agreed view on any of these major issues. There were of course considerable areas of the Province in the south-west and north-east and east, which provoked no controversy on either side, but, in the absence of any reconciliation on all main questions affecting the drawing of the boundary itself, my colleagues assented to the view at the close of discussion that I had no alternative but to proceed to give my own decision.

10 This I now proceed to do but I should like at the same time to express my gratitude to my colleagues for their indispensable assistance in clarifying and discussing the difficult questions involved. The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award, and in the map\* attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

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\* not printed

11 I have done what I can in drawing the line to eliminate any avoidable cutting of railway communications and of river systems, which are of importance to the life of the province but it is quite impossible to draw a boundary under our terms of reference without causing some interruption of this sort, and I can only express the hope that arrangements can be made and maintained between the two States that will minimize the consequences of this interruption as far as possible

CYRIL RADCLIFFE

NEW DELHI,

*The 12th August, 1947*

#### THE SCHEDULE

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#### ANNEXURE A

A line shall be drawn along the boundary between the Thana of Phansidewa in the District of Darjeeling and the Thana Tetulia in the District of Jalpaiguri from the point where the boundary meets the Province of Bihar and then along the boundary between the Thanas of Tetulia and Raiganj, the Thanas of Pachagar and Raiganj, and the Thanas of Pachagar and Jalpaiguri, and shall then continue along the northern corner of the Thana Debiganj to the boundary of the State of Cooch-Bihar. The District of Darjeeling and so much of the District of Jalpaiguri as lies north of this line shall belong to West Bengal but the Thana of Patgram and any other portion of Jalpaiguri District which lies to the east or south shall belong to East Bengal.

2 A line shall then be drawn from the point where the boundary between the Thanas of Haripur and Raiganj in the District of Dinajpur meets the border of the Province of Bihar to the point where the boundary between the Districts of 24 Parganas and Khulna meets the Bay of Bengal. This line shall follow the course indicated in the following paragraphs. So much of the Province of Bengal as lies to the west of it shall belong to West Bengal. Subject to what has been provided in paragraph 1 above with regard to the Districts of Darjeeling and Jalpaiguri the remainder of the Province of Bengal shall belong to East Bengal.

3 The line shall run along the boundary between the following Thanas



Haripur and Raiganj, Haripur and Hemtabad, Ranisankail and Hemtabad, Pirganj and Hemtabad, Pirganj and Kaliganj, Bochaganj and Kaliganj, Biral and Kaliganj, Biral and Kushmundi, Biral and Gangarampur, Dinajpur and Gangarampur, Dinajpu and Kumarganj, Chirirbandar and Kumarganj, Phulbari and Kumarganj, Phulbari and Balurghat. It shall terminate at the point where the boundary between Phulbari and Balurghat meets the north-south line of the Bengal-Assam Railway in the eastern corner of the Thana of Balurghat. The line shall turn down the western edge of the railway lands belonging to that railway and follow that edge until it meets the boundary between the Thanas of Balurghat and Panchbibi.

4 From that point the line shall run along the boundary between the following Thanas

Balurghat and Panchbibi, Balurghat and Jowpurhat; Balurghat and Dhamairhat, Tapan and Dhamairhat, Tapan and Patnitola, Tapan and Porsha, Bamangola and Porsha, Habibpur and Porsha, Habibpur and Gomastapur, Habibpur and Bholahat, Malda and Bholahat, English Bazar and Bholahat; English Bazar and Shibganj, Kaliachak and Shibganj, to the point where the boundary between the two last mentioned thanas meets the boundary between the Districts of Malda and Murshidabad on the river Ganges

5 The line shall then turn south-east down the River Ganges along the boundary between the Districts of Malda and Murshidabad, Rajshahi and Murshidabad, Rajshahi and Nadia, to the point in the north-western corner of the District of Nadia where the channel of the River Mathabanga takes off from the River Ganges. The district boundaries, and not the actual course of the River Ganges, shall constitute the boundary between East and West Bengal

6 From the point on the River Ganges where the channel of the River Mathabanga takes off, the line shall run along that channel to the northernmost point where it meets the boundary between the Thanas of Daulatpur and Karimpur. The middle line of the main channel shall constitute the actual boundary

7 From this point the boundary between East and West Bengal shall run along the boundaries between the Thanas of Daulatpur and Karimpur, Gangani and Karimour, Meherpur and Karimpur, Meherpur and Tehatta, Meherpur and Chapra, Damurhuda and Chapra, Damurhuda and Krishnaganj, Chuadanga and Krishnaganj, Jibannagar and Krishnaganj, Jibannagar

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and Hanskhali, Maheshpur and Hanskhali, Maheshpur and Ranaghat, Maheshpur and Bongaon, Jhikargacha and Bongaon, Sarsa and Bongaon, Sarsa and Gaighata, Gaighata and Kalaroa to the point where the boundary between those thanas meets the boundary between the Districts of Khulna and 24 Parganas.

8 The line shall then run southwards along the boundary between the Districts of Khulna and 24 Parganas, to the point where that boundary meets the Bay of Bengal

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REPORT OF THE BENGAL BOUNDARY COMMISSION  
(SYLHET DISTRICT)

'To

'HIS EXCELLENCY THE GOVERNOR-GENERAL

1 I have the honour to present the report of the Bengal Boundary Commission relating to Sylhet District and the adjoining districts of Assam. By virtue of Section 3 of the Indian Independence Act, 1947, the decisions contained in this report become the decision and award of the Commission.

2 The Bengal Boundary Commission was constituted as stated in my report dated the 12th of August 1947 with regard to the division of the Province of Bengal into East and West Bengal. Our terms of reference were as follows —

"The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.

In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam."

3 After the conclusion of the proceedings relating to Bengal the Commission invited the submission of memoranda and representations by parties interested in the Sylhet quest. A number of such memoranda and representations was received.

4 The Commission held open sittings at Calcutta on the 4th, 5th, and 6th days of August 1947, for the purpose of hearing arguments. The main arguments were conducted on the one

side by counsel on behalf of the Government of East Bengal and the Provincial and District Muslim Leagues, and on the other side, by counsel on behalf of the Government of the Province of Assam and the Assam Provincial Congress Committee and the Assam Provincial Hindu Mahasabha. I was not present in person at the open sittings as I was at the time engaged in the proceedings of the Punjab Boundary Commission which were taking place simultaneously, but I was supplied with the daily record of the Sylhet proceedings and with all material submitted for the Commission's consideration. At the close of the open sittings, the members of the Commission entered into discussions with me as to the issues involved and the decisions to be come to. These discussions took place at New Delhi.

5 There was an initial difference of opinion as to the scope of the reference entrusted to the Commission. Two of my colleagues took the view that the Commission had been given authority to detach from Assam and to attach to East Bengal any Muslim majority areas of any part of Assam that could be described as contiguous to East Bengal, since they construed the words "the adjoining districts of Assam" as meaning any districts of Assam that adjoined East Bengal. The other two of my colleagues took the view that the Commission's power of detaching areas from Assam and transferring them to East Bengal was limited to the District of Sylhet and contiguous Muslim majority areas (if any) of other districts of Assam that adjoined Sylhet. The difference of opinion was referred to me for my casting vote, and I took the view that the more limited construction of our terms of reference was the correct one and that the "adjoining districts of Assam" did not extend to other districts of Assam than those that adjoined Sylhet. The Commission accordingly proceeded with its work on this basis.

6 It was argued before the Commission on behalf of the Government of East Bengal that on the true construction of our terms of reference and section 3 of the Indian Independence Act, 1947, the whole of the District of Sylhet at least must be transferred to East Bengal and the Commission had no option but to act upon this assumption. All my colleagues agreed in rejecting this argument, and I concur in their view.

7 We found some difficulty in making up our minds whether, under our terms of reference, we were to approach the Sylhet question in the same way as the question of partitioning Bengal, since there were some differences in the language employed. But all my colleagues came to the conclusion that we were intended to divide the Sylhet and adjoining districts of

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Assam between East Bengal and the Province of Assam on the basis of contiguous majority areas of Muslims and non-Muslims, but taking into account other factors, I am glad to adopt this view

8 The members of the Commission were however unable to arrive at an agreed view as to how the boundary lines should be drawn, and after discussion of their differences, they invited me to give my decision. This I now proceed to do

9 In my view, the question is limited to the districts of Sylhet and Cachar, since of the other districts of Assam that can be said to adjoin Sylhet neither the Garo Hills nor the Khasi and Jaintia Hills nor the Lushai Hills have anything approaching a Muslim majority of population in respect of which a claim could be made

10 Out of 35 thanas in Sylhet, 8 have non-Muslim majorities, but of these eight, two—Sulla and Ajmirganj (which is in any event divided almost evenly between Muslims and non-Muslims), are entirely surrounded by preponderatingly Muslim areas, and must therefore go with them to East Bengal. The other six thanas comprising a population of over 530,000 people stretch in a continuous line along part of the southern border of Sylhet District. They are divided between two sub-divisions, of which one—South Sylhet, comprising a population of over 515,000 people, has in fact a non-Muslim majority of some 40,000, while the other, Karimganj, with a population of over 568,000 people has a Muslim majority that is a little larger.

11 With regard to the District of Cachar, one thana, Hailakandi, has a Muslim majority and is contiguous to the Muslim thanas of Badarpur and Karimganj in the District of Sylhet. This thana forms, with the thana of Katlichara immediately to its south, the sub-division of Hailakandi, and in the sub-division as a whole Muslims enjoy a very small majority being 51 per cent of the total population. I think that the dependence of Katlichara on Hailakandi for normal communications makes it important that the area should be under one jurisdiction, and that the Muslims would have at any rate a strong presumptive claim for the transfer of the sub-division of Hailakandi, comprising a population of 166,536, from the Province of Assam to the Province of East Bengal

12 But a study of the map shows, in my judgment, that a division on these lines would present problems of administration that might gravely affect the future welfare and happiness

of the whole District. Not only would the six non-Muslim thanas of Sylhet be completely divorced from the rest of Assam if the Muslim claim to Hailakandi were recognised, but they form a strip running east and west whereas the natural division of the land is north and south and they effect an awkward severance of the railway line through Sylhet, so that, for instance, the junction for the town of Sylhet itself, the capital of the district, would lie in Assam, not in East Bengal.

13 In those circumstances I think that some exchange of territories must be effected if a workable division is to result. Some of the non-Muslim thanas must go to East Bengal and some Muslim territory and Hailakandi must be retained by Assam. Accordingly I decide and award as follows —

A line shall be drawn from the point where the boundary between the Thanas of Patharkandi and Kulaura meets the frontier of Tripura State and shall run north along the boundary between those Thanas, then along the boundary between the Thanas of Patharkandi and Barlekha, then along the boundary between the Thanas of Karimganj and Barlekha, and then along the boundary between the Thanas of Karimganj and Bean Bazar to the point where that boundary meets the River Kusiya. The line shall then turn to the east taking the River Kusiya as the boundary and run to the point where that river meets the boundary between the Districts of Sylhet and Cachar. The centre line of the main stream or channel shall constitute the boundary. So much of the District of Sylhet as lies to the west and north of this line shall be detached from the Province of Assam and transferred to the Province of East Bengal. No other part of the Province of Assam shall be transferred.

14 For purposes of illustration a map\* marked A is attached on which the line is delineated. In the event of any divergence between the line as delineated on the map and as described in paragraph 13, the written description is to prevail.

NEW DELHI,  
The 13th August 1947

CYRIL RADCLIFFE.

# REPORT OF THE PUNJAB BOUNDARY COMMISSION

To

HIS EXCELLENCY THE GOVERNOR-GENERAL

1 I have the honour to present the decision and award of the Punjab Boundary Commission which, by virtue of

section 4 of the Indian Independence Act, 1947, is represented by my decision as Chairman of that Commission

2. The Punjab Boundary Commission was constituted by the announcement of the Governor-General dated the 30th of June 1947, Reference No D50/7/47R. The members of the Commission thereby appointed were—

Mr Justice Din Muhammad,  
Mr Justice Muhammad Munir,  
Mr Justice Mehr Chand Mahajan, and  
Mr Justice Teja Singh

I was subsequently appointed Chairman of this Commission

3. The terms of reference of the Commission, as set out in the announcement, were as follows —

“The Boundary Commission is instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors ”

We were desired to arrive at a decision as soon as possible before the 15th of August

4. After preliminary meetings, the Commission invited the submission of memoranda and representations by interested parties. Numerous memoranda and representations were received

5. The public sittings of the Commission took place at Lahore, and extended from Monday the 21st of July 1947, to Thursday the 24th of July 1947, inclusive, with the exception of Sunday, the 27th of July. The main arguments were conducted by counsel on behalf of the Indian National Congress the Muslim League, and the Sikh members of the Punjab Legislative Assembly but a number of other interested parties appeared and argued before the Commission. In view of the fact that I was acting also as Chairman of the Bengal Boundary Commission, whose proceedings were taking place simultaneously with the proceedings of the Punjab Boundary Commission, I did not attend the public sittings in person, but made arrangements to study daily the record of the proceedings and of all material submitted for our consideration.

6. After the close of the public sittings, the Commission adjourned to Simla where I joined my colleagues, and we entered upon discussions in the hope of being able to present

an agreed decision as to the demarcation of the boundaries. I am greatly indebted to my colleagues for indispensable assistance in the clarification of the issues and the marshalling of the arguments for different views, but it became evident in the course of our discussions that the divergence of opinion between my colleagues was so wide that an agreed solution of the boundary problem was not to be obtained. I do not intend to convey by this that there were not large areas of the Punjab on the west and on the east respectively which provoked no controversy as to which State they should be assigned to, but when it came to the extensive but disputed areas in which the boundary must be drawn, differences of opinion as to the significance of the term "other factors", which we were directed by our terms of reference to take into account, and as to the weight and value to be attached to those factors, made it impossible to arrive at any agreed line. In those circumstances my colleagues, at the close of our discussions, assented to the conclusion that I must proceed to give my own decision.

7. Thus I now proceed to do. The demarcation of the boundary line is described in detail in the schedule which forms Annexure A to this award, and in the map\* attached thereto, Annexure B. The map is annexed for purposes of illustration, and if there should be any divergence between the boundary as described in Annexure A and as delineated on the map in Annexure B, the description in Annexure A is to prevail.

8. Certain representations were addressed to the Commission on behalf of the States of Bikaner and Bahawalpur, both of which States were interested in canals whose headworks were situate in the Punjab Province. I have taken the view that an interest of this sort can not weigh directly in the question before us as to the division of the Punjab between the Indian Union and Pakistan since the territorial division of the province does not affect rights of private property, and I think that I am entitled to assume with confidence that any agreements that either of those States has made with the Provincial Government as to the sharing of water from these canals or otherwise will be respected by whatever Government hereafter assumes jurisdiction over the headworks concerned. I wish also to make it plain that no decision that is made by this Commission is intended to affect whatever territorial claim the State of Bahawalpur may have in respect of a number of villages lying between Sulemanke Weir and Gurka Ferry.

9. The task of delimiting a boundary in the Punjab is a

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\* Not printed

difficult one. The claims of the respective parties ranged over a wide field of territory, but in my judgment the truly debatable ground in the end proved to lie in and around the area between the Beas and Sutlej rivers on the one hand, and the river Ravi on the other. The fixing of a boundary in this area was further complicated by the existence of canal systems, so vital to the life of the Punjab but developed only under the conception of a single administration, and of systems of road and rail communication, which have been planned in the same way. There was also the stubborn geographical fact of the respective situation of Lahore and Amritsar, and the claims to each or both of those cities which each side vigorously maintained. After weighing to the best of my ability such other factors as appeared to me relevant as affecting the fundamental basis of contiguous majority areas, I have come to the decision set out in the Schedule which thus becomes the award of the Commission. I am conscious that there are legitimate criticisms to be made of it, as there are, I think, of any other line that might be chosen.

10 I have hesitated long over those not inconsiderable areas east of the Sutlej River and in the angle of the Beas and Sutlej Rivers in which Muslim majorities are found. But on the whole I have come to the conclusion that it would be in the true interests of neither State to extend the territories of the West Punjab to a strip on the far side of the Sutlej and that there are factors such as the disruption of railway communications and water systems that ought in this instance to displace the primary claims of contiguous majorities. But I must call attention to the fact that the Dipalpur Canal, which serves areas in the West Punjab, takes off from the Ferozepore headworks and I find it difficult to envisage a satisfactory demarcation of boundary at this point that is not accompanied by some arrangement for joint control of the intake of the different canals dependent on these headworks.

11 I have not found it possible to preserve undivided the irrigation system of the Upper Bari Doab Canal, which extends from Madhopur in the Pachankot Tahsil to the western border of the district of Lahore, although I have made small adjustments of the Lahore-Amritsar district boundary to mitigate some of the consequences of this severance, nor can I see any means of preserving under one territorial jurisdiction the Mandi Hydro-electric Scheme which supplies power in the districts of Kangra, Gurdaspur, Amritsar, Lahore, Jullundur, Ludhiana, Ferozepore, Sheikhupura, and Lyallpur. I think it only right to express the hope that, where the drawing of a boundary line cannot avoid disrupting such unitary services as canal irrigation, railways, and electric power transmission,



a solution may be found by agreement between the two States for some joint control of what has hitherto been a valuable common service

12 I am conscious too that the award cannot go far to wards satisfying sentiments and aspirations deeply held on either side but directly in conflict as to their bearing on the placing of the boundary If means are to be found to gratify to the full those sentiments and aspirations, I think that they must be found in political arrangements with which I am not concerned, and not in the decision of a boundary line drawn under the terms of reference of this Commission

CYRIL RADCLIFFE

NEW DELHI,  
*The 12th August 1947.*

## THE SCHEDULE

### ANNEXURE A

1 The boundary between the East and West Punjab shall commence on the north at the point where the west branch of the Ujh river enters the Punjab Province from the State of Kashmir The boundary shall follow the line of that river down the western boundary of the Pathankot Tahsil to the point where the Pathankot Shakargarh and Gurdaspur tahsils meet The tahsil boundary and not the actual course of the Ujh river shall constitute the boundary between the East and West Punjab

2 From the point of meeting of the three tahsils above mentioned, the boundary between the East and West Punjab shall follow the line of the Ujh river to its junction with the river Ravi and thereafter the line of the river Ravi along the boundary between the tahsils of Gurdaspur and Shakargarh, the boundary between the tahsils of Batala and Shakargarh, the boundary between the tahsils of Batala and Narowal, the boundary between the tahsils of Aynala and Narowal, and the boundary between the tahsils of Aynala and Shadara, to the point on the river Ravi where the district of Amritsar is divided from the district of Lahore The tahsil boundaries referred to, and not the actual course of the river Ujh or the river Ravi, shall constitute the boundary between the East and West Punjab.

3 From the point on the river Ravi where the district of Amritsar is divided from the district of Lahore the boundary between the East and West Punjab shall turn southwards

following the boundary between the tahsils of Ajnala and Lahore and then the tahsils of Tarn Taran and Lahore to the point where the tahsils of Kasur, Lahore and Tarn Taran meet. The line will then turn south-westward along the boundary between the tahsils of Lahore and Kasur to the point where that boundary meets the north-east corner of village Theh Jharolian. It will then run along the eastern boundary of that village to its junction with village Chathanwala, turn along the northern boundary of that village, and then run down its eastern boundary to its junction with village Waigal. It will then run along the eastern boundary of village Waigal to its junction with village Kalia, and then along the southern boundary of village Waigal to its junction with village Panhuwan. The line will then run down the eastern boundary of village Panhuwan to its junction with village Gaddoke. The line will then run down the eastern border of village Gaddoke to its junction with village Nurwala. It will then turn along the southern boundary of village Gaddoke to its junction with village Katluni Kalan. The line will then run down the eastern boundary of village Katluni Kalan to its junction with villages Kals and Mastgarh. It will then run along the southern boundary of village Katluni Kalan to the north-west corner of village Kals. It will then run along the western boundary of village Kals to its junction with village Khem Karan. The line will then run along the western and southern boundaries of village Khem Karan to its junction with village Maewala. It will then run down the western and southern boundaries of village Maewala, proceeding eastward along the boundaries between village Mahadepur on the north and villages Sheikhpura, Kuhna, Kamalpuran, Fatehwala and Mahewala. The line will then turn northward along the western boundary of village Sahjra to its junction with villages Mahadepur and Machhike. It will then turn north-eastward along the boundaries between villages Machhike and Sahjra and then proceed along the boundary between villages Rattoke Sahjra and Mabbuke. The line will then run north-east between the villages Rattoke and Mabbuke to the junction of villages Rattok, Mabbuke, and Gajjal. From that point the line will run along the boundary between villages Mabbuke and Gajjal, and then turn south along the eastern boundary of village Mabbuke to its junction with village Nagar Amanpur. It will then turn along the north-eastern boundary of village Nagar Amanpur, and run along its eastern boundary to its junction with village Mastoke. From there it will run along the eastern boundary of village Mastoke to where it meets the boundary between the tahsils of Kasur and Ferozepore.

For the purpose of identifying the villages referred to in

this paragraph, I attach a map of the Kasur tahsil authorised by the then Settlement Officer, Lahore District, which was supplied to the commission by the Provincial Government

4 The line will then run in a south westerly direction down the Sutlej River on the boundary between the Districts of Lahore and Ferozepure to the point where the districts of Ferozepure, Lahore and Montgomery meet. It will continue along the boundary between the districts Ferozepure and Montgomery to the point where this boundary meets the border of Bahawalpur State. The district boundaries, and not the actual course of the Sutlej River, shall in each case constitute the boundary between the East and West Punjab

5 It is my intention that this boundary line should ensure that the canal headworks at Sulemanke will fall within the territorial jurisdiction of the West Punjab. If the existing delimitation of the boundaries of Montgomery District does not ensure this, I award to the West Punjab so much of the territory concerned as covers the headworks, and the boundary shall be adjusted accordingly

6 So much of the Punjab Province as lies to the west of the line demarcated in the preceding paragraphs shall be the territory of West Punjab. So much of the territory of the Punjab Province as lies to the east of that line shall be the territory of the East Punjab

**PART II.**  
**Government of India Act, 1935,**  
 (as adopted and modified )  
**ARRANGEMENT OF SECTIONS**

**PART I**  
**Introductory**

**Section**

- 1 Short title
- 2 (Omitted)
- 3 The Governor-General
- 4 (Omitted)

**PART II**  
**The Dominion of India**

**CHAPTER I**  
**Establishment of Dominion and Accession of**  
**Indian States**

- 5 Establishment of the Dominion
- 6 Accession of Indian States

**CHAPTER II**  
**The Dominion Executive**  
*The Governor-General.*

- 7 Functions of the Governor-General
- 8 Extent of executive authority of the Dominion

*Administration of Dominion Affairs*

- 9 Council of ministers.
- 10 Other provisions as to ministers
- 11—15 (Omitted)
- 16 Advocate-General for Dominion
- 17 Conduct of business of Dominion Government

CHAPTER III  
The Dominion Legislature  
*General*

Section

- 18. Constitution Dominion-Legislature
- 19 Sessions of the Legislature, prorogation and dissolution
- 20 Right of Governor-General to address, and send messages to the Legislature
- 21 Rights of ministers and Advocate General as respects the Legislature
- 22 Officers of the Legislature
- 23 Voting in the Legislature, power [of the Legislature to act notwithstanding vacancies, and quorum

*Provisions as to Members of Legislature*

- 24—27 (Omitted)
- 28 Privileges, &c, of members
- 29 Salaries and allowances of members

*Legislative Procedure.*

- 30 Provision as to Pending Bills
- 31. (Omitted)
- 32 Assent to Bills.

*Procedure in Financial matters*

- 33 Annual financial statement
- 34. Procedure in the Legislature with respect to estimates
- 35 Authentication of schedule of authorised expenditure
- 36. Supplementary statements of expenditure.
- 37 .Special provisions as to financial Bills

*Procedure generally*

Section

- 38 Rules of procedure
- 39 (Omitted)
- 40 Restriction on discussion in the Legislature
- 41 Courts not to inquire into proceedings of the Legislature

CHAPTER IV

**Legislative power of Governor-General**

- 42 Power of Governor-General to promulgate ordinances in cases of emergency
- 43-45 (Omitted)

PART III

**The Governors' Provinces**

CHAPTER I

**The Provinces**

- 46 Governors' Provinces
- 47 Provisions as to Berar

CHAPTER II

**The Provincial Executive**

*The Governor*

- 48 Appointment of Governor
- 49 Executive authority of Province

*Administration of Provincial Affairs*

- 50 Council of ministers
- 51 Other provisions as to ministers
- 52-54 (Omitted)
- 55 Advocate-General for Province
- 56-58 (Omitted)
- 59 Conduct of business of Provincial Government

## CHAPTER III.

## The Provincial Legislature

*General*

## Section

- 60 Constitution of Provincial Legislatures
- 61 Composition of Chambers of Provincial Legislatures
- 62 Sessions of the Legislature, prorogation and dissolution
- 63 Right of Governor to address, and send messages to, Chambers
- 64 Rights of ministers and Advocate-General as respects Chambers
- 65 Officers of Chambers
- 66. Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum

*Provisions as to Members of Legislatures.*

- 67 Oath of members
- 68 Vacation of seats
- 69. Disqualification for membership
- 70 Penalty for sitting and voting when not qualified, or when disqualified
- 71 Privileges, &c, of members
- 72 Salaries and allowances of members

*Legislative Procedure*

- 73 Introduction of Bills, &c
- 74. Passing of Bills in Provinces having Legislative Councils
- 75 Assent to Bills
- 76 Bills reserved for consideration
- 77 (Omitted)

*Procedure in Financial matters*

Section

- 78 Annual financial statement
- 79 Procedure in Legislature with respect to estimates
- 80 Authentication of schedule of authorised expenditure
- 81 Supplementary statements of expenditure
- 82 Special provisions as to financial Bills
- 83 (Omitted)

*Procedure generally*

- 84 Rules of procedure
- 85 (Omitted).
- 86 Restrictions on discussion in the Legislature
- 87 Courts not to inquire into proceedings of the Legislature.

CHAPTER IV

**Legislative powers of Governor**

- 88 Power of Governor to promulgate ordinances during recess of Legislature
- 89—90 (Omitted)

CHAPTER V

**Excluded Areas and Partially Excluded Areas**

- 91 Excluded areas and partially excluded areas.
- 92 Administration of excluded areas and partially excluded areas

CHAPTER VI (omitted)

- 93 (Omitted)

PART IV

**The Chief Commissioners' Provinces.**

- 49 Chief Commissioners' Provinces



## Section

- 95 (Omitted)
- 96 The Andaman and Nicobar Islands
- 97 Coorg
- 98 (Omitted)

**PART V****Legislative Powers.****CHAPTER I.****Distribution of Powers**

- 99 Extent of Dominion and Provincial laws.
- 100. Subject matter of Dominion and Provincial laws
- 101 Extent of power to legislate for States.
- 102 Power of Dominion Legislature to legislate if an emergency is proclaimed
- 103 Power of Dominion Legislature to legislate for two or more Provinces by consent.
- 104 Residual powers of legislation
- 105 (Omitted)
- 106 Provisions as to legislation for giving effect to international agreements
- 107 Inconsistency between Dominion laws and Provincial, or State, laws.

**CHAPTER II.****Restrictions on Legislative Powers.**

- 108. (Omitted)
- 109 Requirements as to sanctions and recommendations to be regarded as matters of procedure only.
- 110 (Omitted)

**CHAPTER III (omitted)**

- 111—121. (Omitted)

PART VI  
**Administrative Relations Between Dominion,  
Provinces and States**

*General.*

Section

- 122 Obligation of units and Dominion
- 123 (Omitted)
- 124 Power of Dominion to confer powers, &c.,  
on Provinces and States in certain cases
- 125 Administration of Dominion Acts in  
Indian States
- 126 Control of Dominion over Province in  
certain cases,
- 126A Amendments as to Proclamations of  
emergency
- 127 Acquisition of land for Dominion pur-  
poses
- 128 Duty of Ruler of a State as respects  
Dominion subjects

*Broadcasting*

- 129 Broadcasting
- Interference with Water supplies*
- 130 Complaints as to interference with water  
supplies
- 131. Decision of complaints
- 132 Interference with water supplies of Chief  
Commissioner's Province
- 133 Jurisdiction of Courts excluded.
- 134 Ruler of State may exclude application of  
provisions as to water supply

*Inter-Provincial Co-operation.*

- 135 Provisions with respect to an Inter-Pro-  
vincial Council

PART VII  
Finance, Property, Contracts and Suits

CHAPTER I

Finance.

*Distribution of Revenues between the Dominion  
and the Units*

Section

136 Meaning of "revenues of Dominion" and "revenues of Province"

137 Certain succession duties, stamp duties, terminal taxes and taxes on fares and freights

138 Taxes on income

139 (Omitted)

140 Salt duties, excise duties and export duties

141 Prior sanction of Governor-General required to bills affecting taxation in which Provinces are interested

142 Grants from Dominion to certain Provinces

142 A Taxes on professions, trades, callings and employments.

143 Savings

144 Calculation of "net proceeds," &c

145—149 (Omitted)

*Miscellaneous Financial Provisions*

150 Expenditure defrayable out of Indian Revenues

151 Provisions as to the custody of public moneys

152 (Omitted)

153 Previous sanction of Governor-General to legislation with respect to Reserve Bank, currency and coinage

**Section**

154. Exemption of certain public property from taxation,

154A Exemption from taxes on electricity

155 Exemption of Provincial Governments and Rulers of Accessing States in respect of Dominion taxation,

156 Adjustment in respect of certain expenses and pensions.

157—160 (Omitted).

**CHAPTER II**

**Borrowing and Audit**

*Borrowing*

161. (Omitted)

162 Borrowing by Dominion Government.

163 Borrowing by Provincial Governments

164 Loans by Dominion Government to Accessing States.

165 (Omitted)

*Audit and Accounts*

166 Auditor-General of India

167 Provincial Auditor-General

168 Power of Auditor-General of India to give directions as to accounts

169 Audit reports

170—171 (Omitted)

**CHAPTER III**

**Property, Contracts, Liabilities and Suits**

172—173 (Omitted)

174 Property accruing by escheat or lapse, or as bona vacantia

## Section

175 Power to acquire 'property and to make contracts, &c

176 Suits and proceedings

177 (Omitted).

178 Special provisions as to existing loans, guarantees and other financial obligations

179-180, (Omitted)

## PART VIII (Omitted)

181-199 (Omitted)

## PART IX

**The Judicature**

## CHAPTER I

**The Federal Court**

200. Establishment and constitution of Federal Court

201. Salaries, &c, of judges

202. Temporary appointment of acting Chief Justice

203. Seat of Federal Court

204. Original jurisdiction of Federal Court

205. Appellate jurisdiction of Federal Court in appeals from High Courts in British India

206. Power of Dominion Legislature to enlarge appellate jurisdiction

207. Appellate jurisdiction of Federal Court in appeals from High Courts in Acceding States

208. Appeals to His Majesty in Council

209. Form of judgment on appeal

210. Enforcement of decrees and orders of Federal Court and orders as to discovery, &c

211. Letters of request to Acceding States

Section

- 212 Law declared by Federal Court and Privy Council to be binding on all courts
- 213 Power of Governor-General<sup>1</sup> to consult Federal Court
- 214 Rules of court, &c
- 215 Ancillary powers of Federal Court
- 216 Expenses of Federal Court
- 217 Construction of references to High Courts in States
- 218 Savings

CHAPTER II

**The High Courts in British India**

- 219 Meaning of "High Court"
- 220 Constitution of High Courts
- 221 Salaries, &c. of judges
- 222 Temporary and additional judges
- 223 Jurisdiction of existing High Courts
- 224 Administrative functions of High Courts
- 225 Transfer of certain cases to High Court for trial
- 226 Jurisdiction in revenue matters
- 227 Proceedings of High Courts to be in English
- 228 Expenses of High Courts
- 229 Power of His Majesty to constitute or re-constitute High Courts by Letters Patent
- 230 Extra-provincial jurisdiction of High Courts
- 231 Saving and definitions

PART X  
The Services

CHAPTER I (Omitted)

Section

232-239 (omitted).

CHAPTER II  
Civil Services

*General Provisions*

240 Tenure of office of persons employed in civil capacities in India

241 Recruitment and conditions of service

242 Application of preceding section to railway, customs, postal and telegraph services, and officials of courts

243 Special provisions as to police

*Recruitment by Secretary of State and provisions as to certain posts*

244-246 (Omitted)

247 Conditions of service of persons originally recruited by Secretary of State

248-252 (Omitted)

*Special provisions as to Judicial Officers*

253 Judges of the Federal Court and High Courts

254 District Judges, &c

255 Subordinate civil judicial service.

256 Subordinate criminal magistracy

257 (Omitted)

*Provisions for the Protection of certain existing Officers*

258-259 (Omitted)

260 General provisions as to persons retiring before the establishment of the Dominion

*Miscellaneous*

Section

261 (Omitted)

262 Eligibility for office of persons who are  
' not British persons

263 Joint services and posts

CHAPTER III

**Public Service Commissions.**

264 Public Service Commissions

265 Composition and staff of Commissions

266 Functions of Public Service Commissions

267 Power to extend functions of Public  
Service Commissions.

268 Expenses of Public Service Commissions.

CHAPTER IV. (Omitted).

269 (Omitted).

CHAPTER V

**General**

270 (Omitted)

271 Protection of public servants against pro-  
secution and suits

272-274 (Omitted)

275 Persons not to be disqualified by sex for  
holding certain offices

276 Transitional provisions

277 Interpretation, &c

PART XI (Omitted)

278-284 (Omitted)

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**Miscellaneous and General.**

285-288 (Omitted).



*New Provinces and alterations of boundaries  
of Provinces*

Section

289 (Omitted)

290 Creation of New Provinces and alteration  
of boundaries of Provinces

*Franchise*

291 Franchise and elections

292-294 (Omitted)

295 Provisions as to death sentences

296 Courts of appeal in revenue matters

297 Prohibition of certain restrictions on in-  
ternal trade

298 Persons not to be subjected to disability  
by reason of race, religion, &c

299 Compulsory acquisition of land, &c.

300 (Omitted)

301 Repeal of s 18 of 21 Geo 3 c 70 and s 12  
of 37 Geo 3 c. 142.

*High Commissioner*

302 (Omitted)

*General Provisions*

303 Provisions as to Sheriff of Calcutta

304 Persons acting as Governor-General or  
Governor

305 Secretarial staffs of Governor-General and  
Governor

305A (Omitted)

306 Protection of Governor-General or  
Governor

307-310 (Omitted)

*Interpretation*

311 Interpretation, &c.

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312-319 (Omitted)

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**Commencement, Repeals, &c**

320 (Omitted)

321 Repeals

SCHEDULES

**First and Second Schedules**—(Omitted)

**Third Schedule**—Provisions as to Governor-General and Governors of Provinces

**Fourth Schedule**—Forms of Oaths or Affirmations

**Fifth Schedule**—Composition of Provincial legislatures.

**Sixth Schedule**—Provisions as to Franchise

**Seventh Schedule**—Legislative Lists

**Eighth and Ninth Schedules**—(Omitted),

**Tenth Schedule**—Enactments repealed

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## GOVERNMENT OF INDIA ACT, 1935

*[The text of the Act given below incorporates the various amendments, adaptations and modifications made from time to time, ending with the India Provisional Constitution [Second Amendment] Order, 1947]*

### An Act to make further provision for the Government of India

[2nd August, 1935]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows —

#### PART I—INTRODUCTORY

1 **Short Title** — This Act may be cited as the Government of India Act, 1935<sup>1</sup>

2 (Omitted)

3 **[The Governor-General]** — The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual]

4 (Omitted)

#### PART II—THE DOMINION OF INDIA

##### CHAPTER I

##### *Establishment of Dominion and Accession of Indian States*

5 **[Establishment of the Dominion]** — (1) The Dominion of India established by the Indian Independence Act, 1947, shall as from the fifteenth day of August, 1947, be a Union comprising —

- (a) the Provinces hereinafter called Governors' Provinces,
- (b) the Provinces hereinafter called Chief Commissioners' Provinces,
- (c) the Indian States acceding to the Dominion in the manner hereinafter provided, and
- (d) any other areas that may with the consent of the Dominion be included in the Dominion

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<sup>1</sup> This Part came into force on April 1, 1937 under para 3 of G of I (O & T Provisions) Order

<sup>2</sup> *Interpretation of Act* — For observations on the principles to be applied for the purpose of the interpretation of the Government of India Act, 1935, see *In re The CP & Berar Act No XIV of 1938, [1939] FCR 18*, at pp 56, 73 and 96

<sup>3</sup> Subst by Ind Prov Cons Order 1947

“(2) The said Dominion of India is hereafter in this Act referred to as “the Dominion” and the said fifteenth day of August is hereafter in this Act referred to as “the date of the establishment of the Dominion”]

6 <sup>1</sup>[Accession of Indian States —(1) An Indian State shall be deemed to have acceded to the Dominion if the Governor-General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof whereby the Ruler on behalf of the State —

(a) declares that he accedes to the Dominion with the intent that the Governor-General, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of his Instrument of Accession, but, subject always to the terms thereof and for the purposes only of the Dominion, exercise in relation to the State such functions as may be vested in them by order under this Act, and

(b) assumes the obligation of ensuring that due effect is given within the State to the provisions of this Act so far as they are applicable therein by virtue of the Instrument of Accession

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Dominion Legislature may make laws for the State, and the limitations, if any, to which the power of the Dominion Legislature to make laws for the State, and the exercise of the executive authority of the Dominion in the State, are respectively to be subject

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by the Governor-General, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by any Dominion authority in relation to his State

(4) References in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason

(5) In this Act a State which has acceded to the Dominion is referred to as an Acceding State and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument executed under

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1. Subst Ind Prov Cons. Order, 1947,

this section, is referred to as the Instrument of Accession of that State

(6) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by the Governor-General under this section copies of the Instrument and of the Governor-General's acceptance thereof shall be laid before the Dominion Legislature, and all courts shall take judicial notice of every such Instrument and acceptance ]

## CHAPTER II

### The Dominion Executive.

#### *The Governor-General*

**7 Functions of the Governor-General**—(1) Subject to the provisions of this Act the executive authority of the Dominion shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Dominion Legislature from conferring functions upon subordinate authorities or be deemed to transfer to the Governor-General any functions conferred by any existing law on any court, judge or officers, or on any local or other authority

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Dominion and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act

**8 Extent of executive authority of the Dominion**—(1) Subject to the provisions of this Act, the executive authority of the Dominion extends<sup>1</sup> [to the matters with respect to which the Dominion Legislature has power to make laws, including the exercise of rights, authority and jurisdiction in and in relation to areas outside the Dominion]

Provided that —

(i) the said authority does not save as expressly provided in this Act extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ,

(ii) the said authority does not save as expressly provided in this Act extend in any Acceding State save to matters with respect to which the Dominion Legislature has power to make laws for that State, and the exercise thereof in each

State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State

[Paragraphs (11) and (12) omitted]

(2) The executive authority of the Ruler of an Acceding State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Dominion Legislature has power to make laws for that State except in so far as the executive authority of the Dominion becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Dominion law

### *Administration of Dominion Affairs*

9 <sup>1</sup>**Council of Ministers** — There shall be a council of ministers to aid and advise the Governor-General in the exercise of his functions

10 **Other provisions as to Ministers** — (1) The Governor-General's ministers shall be chosen and summoned by him shall be sworn as members of the council, and shall hold office during his pleasure

(2) A minister who for any period of six consecutive months is not a member of the Dominion Legislature shall at the expiration of that period cease to be a minister

(3) The salaries of ministers shall be such as the Dominion Legislature may from time to time by Act determine and, until the Dominion Legislature so determine, shall be determined by the Governor-General

Provided that the salary of a minister shall not be varied during his term of office

(4) The question whether any and, if so what advice was tendered by ministers to the Governor-General shall not be inquired into in any court

[Subsection (5) omitted]

11-15 (Omitted)

16 <sup>2</sup>**Advocate-General for Dominion** — (1) The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Dominion

(2) It shall be the duty of the Advocate-General to give advice to the Dominion Government upon such legal matters, and to perform such other duties of a legal character, as may

1 Subst Ind Prov Cons Order, 1947

2 Section 16 came into force on 1st April 1937 and accordingly the first Advocate General for the "Federation" was then appointed

be referred or assigned to him by the Governor General, and in the performance of his duties he shall have right of audience in all courts in any Governor's or Chief Commissioner's Province and, in a case in which the Dominion interests are concerned, in all courts in any Acceding State

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine

[Subsection (4) omitted]

**17 Conduct of business of Dominion Government**—(1) All executive action of the Dominion Government shall be expressed to be taken in the name of the Governor-General

(2) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General

(3) The Governor-General shall make rules for the more convenient transaction of the business of the Dominion Government, and for the allocation among ministers of the said business

[Subsections (4) and (5) omitted]

### CHAPTER III

### The Dominion Legislature General

**18** <sup>1</sup>[**Constitution of the Dominion Legislature**—The powers of the Dominion Legislature under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly under subsection (1) of section 8 of the Indian Independence Act, 1947, be exercisable by that Assembly, and accordingly references in this Act to the Dominion Legislature shall be construed as references to the Constituent Assembly]

**19 Sessions of the Legislature, prorogation and dissolution**—(1) The Dominion Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session

(2) Subject to the provisions of this section, the President of the Dominion Legislature may from time to time—

<sup>1</sup> Subst Ind Prov Cons Order, 1947

(a) summon the Dominion Legislature to meet at such time and place as he thinks fit ;

(b) prorogue the Dominion Legislature.

**20 Right of Governor-General to address and send messages**—(1) The Governor-General may address the Dominion Legislature and for that purpose require the attendance of members

(2) The Governor-General may send messages to the Dominion Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and the Legislature shall with all convenient despatch consider any matter which they are required by the message to take into consideration

**21 Rights of Ministers, and Advocate-General, as respects Legislature**—Every minister, and the Advocate-General, shall have the right to speak in, and otherwise to take part in the proceedings of, the Dominion Legislature or any committee thereof, of which he may be named a member, but shall not by virtue of this section be entitled to vote

**22 Officers of Legislature.**—There shall be paid to the President of the Dominion Legislature such salary as may be fixed by Act of the Dominion Legislature, and until provision in that behalf is so made, such salary as the Governor-General may determine

Any reference in this Act to the President of the Dominion Legislature shall, except in sections 19 and 38, be construed as including a reference to any other person elected by the Constituent Assembly to preside over that Assembly when it functions as the Dominion Legislature under this Act

**23 Voting in Legislature, power of Legislature to act notwithstanding vacancies, and quorum**—(1) Save as provided in the last preceding section all questions at any sitting of the Dominion Legislature shall be determined by a majority of votes of the members present and voting, other than the President or person acting as such

The President or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes

(2) The Dominion Legislature shall have power to act notwithstanding any vacancy in the membership thereof and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings



(3) If at any time during a meeting of the Legislature less than one-sixth of the total number of members of the Legislature are present, it shall be the duty of the President or person acting as such either to adjourn the Legislature or to suspend the meeting until at least one-sixth of the members are present

#### 24-27 (Omitted)

**28 Privileges etc of members**—(1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Dominion Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of the Legislature of any report, paper, votes or proceedings

(2) In other respects, the privileges of members of the Dominion Legislature shall be such as may from time to time be defined by Act of the Dominion Legislature and, until so defined, shall be such as were immediately before the establishment of the Dominion enjoyed by members of the Indian Legislature

[Subsections (3) and (4) omitted].

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in and otherwise take part in the proceedings of the Legislature as they apply in relation to members of the Legislature

**29 Salaries and allowances of members**—Members of the Dominion Legislature shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Dominion Legislature and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of the establishment of the Dominion applicable in the case of members of the Legislative Assembly of the Indian Legislature

**30 Provision as to pending Bills**—(1) A Bill pending in the Dominion Legislature shall not lapse by reason of the prorogation of the Legislature

(2) A Bill which immediately before the establishment of the Dominion, was pending in the Legislative Assembly of the Indian Legislature may, subject to any provision to the contrary which may be included in rules made by the Dominion Legislature under section 38 of this Act, be continued in the Dominion Legislature as if the proceedings taken with reference to the

Bill in the said Legislative Assembly had been taken) in the Dominion Legislature

31 (omitted)

32 **Assent to Bills**—(1) When a Bill has been passed by the Dominion Legislature, it shall be presented to the Governor General, and the Governor-General shall declare 'either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom'

Provided that the Governor-General may return the Bill to the Dominion Legislature with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Dominion Legislature shall reconsider the Bill accordingly

*Procedure in Financial matters*

33 **Annual financial statement**—(1) The Governor-General shall in respect of every financial year cause to be laid before the Dominion Legislature a statement of the estimated receipts and expenditure of the Dominion for the year, in this Part of this Act referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately —

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Dominion, and

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(1) The corresponding provision in the Constitution before the 15th August 1947 was para 68 (2) of the Ninth Schedule to the Act according to which a Bill passed by both chambers of the Legislature did not become an Act until the Governor General had declared his assent thereto

In *In re the Hindu Women's Rights to Property Act, 1937*, [1941] F C R. 42, it was contended before the Federal Court that incomplete legislation in the form of a pending Bill was not covered by the saving clause of S 292. The Bill had been passed by the Legislative Assembly as constituted under the Government of India Act 1919, and by the Council of State after the Act of 1935 came into force, and assented to by the Governor General under the Act of 1935. As it had not received the "assent" before the 1st of April 1937, it was contended that the Act was not an "existing law". The Court [which dealt with the issue in the form of a Reference, observed] "The only date with which a court is concerned is the date on which the assent of the Governor General was given, and the question whether the Act was or was not within the competence of the Legislature must be determined with reference to that date and none other"

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Provision for any Bills pending before the Dominion Legislature is now specifically made in S 30 as adapted by the Provisional Constitution Order, 1947

- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Dominion, and shall distinguish expenditure on revenue account from other expenditure

(3) The following expenditure shall be expenditure charged on the revenues of the Dominion —

- (a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is made by or under the third Schedule to this Act,
- (b) debt charges for which the Dominion is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt,
- (c) the salaries and allowances of ministers, of the Advocate-General and of Chief Commissioners,
- (d) the salaries, allowances and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court.

[Sub clauses (e) to (g) (omitted)]

- (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal,
- (i) any other expenditure declared by this Act or any Act of the Dominion Legislature to be so charged

[Sub-section (4) omitted]

**34 Procedure in Legislature with respect to estimates**—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Dominion shall not be submitted to the vote of the Legislature but nothing in this subsection shall be construed as preventing the discussion in the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) of subsection (3) of the last preceding section

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Dominion Legislature which shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein

[Proviso to subsection (2), and sub-section (3) (omitted)]

(4) No demand for a grant shall be made except on the recommendation of the Governor-General

**35 Authentication of schedule of authorised expenditure**—(1) The Governor-General shall authenticate by his signature a schedule specifying —

(a) the grants made by the Legislature under the last preceding section,

(b) the several sums required to meet the expenditure charged on the revenues of the Dominion but not exceeding in the case of any sum, the sum shown in the statement previously laid before the Legislature

[Proviso to subsection (1) (omitted)]

(2) The schedule so authenticated shall be laid before the Legislature but shall not be open to discussion or vote therein

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Dominion shall be deemed to be duly authorised unless it is specified in the schedule so authenticated

Provided that expenditure from the said revenues during the period beginning with the 15th day of August 1947 and ending with the 31st day of March 1948 may be authorized or ratified by general or special order of the Governor-General

**36 Supplementary statements of expenditure**—

If in respect of any financial year further expenditure from the revenues of the Dominion becomes necessary over and above the expenditure theretofore authorised for that year, the Governor-General shall cause to be laid before the Dominion Legislature a supplementary statement showing, the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein

**37 Special provisions as to financial Bills**—(1) A Bill or amendment making provision—

(a) for imposing or increasing any tax, or

(b) for regulating the borrowing of money or the giving of any guarantee by the Dominion Government, or for amending the law with

respect to any financial obligations undertaken or to be undertaken by the Dominion Government, or

- (c) for declaring any expenditure to be expenditure charged on the revenues of the Dominion or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor-General

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licence or fees for services rendered

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Dominion shall not be passed by the Dominion Legislature unless the Governor-General has recommended to the Legislature the consideration of the Bill,

#### *Procedure Generally*

**38 Rules of procedure**—(1) The Dominion Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business

[Rest of S 38 and S 39 (omitted)]

#### **40 Restrictions on discussion in the Legislature**—

(1) No discussion shall take place in the Dominion Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties

In this sub-section the reference to a High Court shall be construed as including a reference to any court in an Acceding State which is a High Court for any of the purposes of Part IX of this Act

[Sub-section (2) (omitted)]

**41 Courts not to inquire into the proceedings of the Legislature**—(1) The validity of any proceedings in the Dominion Legislature shall not be called in question on the ground of any alleged irregularity of procedure

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature, shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers,

CHAPTER IV

**Legislative Powers of Governor-General**

'42 The Governor-General may, in cases of emergency, make and promulgate Ordinances for the peace and good government of the Dominion or any part thereof, and any Ordinance so made shall, for the space of not more than six months from its promulgation have the like force of law as an Act passed by the Dominion Legislature, but the power of making Ordinances under this section is subject to the like restrictions as the power of the Dominion Legislature under this Act to make laws, and any Ordinance made under this section may be controlled or superseded by any such Act

[Ss 43 to 45 (omitted) ]

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1 Subst by India P or Cons Order, 1947

PART III  
**The Governors' Provinces**

CHAPTER I  
**The Provinces**

**46 Governors' Provinces**—(1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, West Bengal, the United Provinces, East Punjab, Bihar, the Central Provinces & Berar, Assam and Orissa, and such other Governors' Provinces as may be created under this Act

[Sub-section (2) (omitted) ]

(3) In this Act the expression "Province" means, unless the context otherwise requires, a Governor's Province, and "Provincial" shall be construed accordingly

**47 Provisions as to Berar**—Berar shall continue to be governed together with the Central Provinces as one Governor's Province under this Act by the name of the Central Provinces and Berar and in the same manner as immediately before the establishment of the Dominion, and any references in this Act to the Dominion of India shall be construed as including a reference to Berar

CHAPTER II  
**The Provincial Executive**

**48 Appointment of Governor**—(1)<sup>2</sup> The Governor of a Province holding office as from the date of the establishment of the Dominion is appointed by His Majesty by a Commission under the Royal Sign Manual, but any person appointed thereafter to be the Governor of a Province shall be appointed by the Governor-General

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office

**49 Executive authority of Province**—(1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers

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<sup>1</sup> This part came into force on the 1st April, 1937, under para 3, G of I (C T Pio) order

<sup>2</sup> Subst by India Prov Cons Order, 1947

subordinate' to him, but nothing in this section shall prevent the Dominion Legislature or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing law on any court, judge, or officer or any local or other authority

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws

### *Administration of Provincial Affairs*

**50 Council of Ministers.**—(1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions

[Sub-sections (2) and (3) (omitted) ]

**51 Other provisions as to Ministers**—(1) The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure

(2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister

(3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine and, until the Provincial Legislature so determine, shall be determined by the Governor

Provided that the salary of a minister shall not be varied during his term of office

(4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court

**52-54 (omitted).**

**55 Advocate-General for Province**—(1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a judge of a High Court, to be Advocate-General for the Province

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor

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1 A minister is an officer subordinate to the Governor within the meaning of s 49 (1) *King Emperor v Slnath Banerji* [1945] F C R 195 (P C)



(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine

[Sub-section (4) (omitted) ]

56-58 (omitted )

**59 Conduct of business of Provincial Government**—(1) All executive action of the Government of a province shall be expressed to be taken in the name of the Governor

<sup>1</sup>(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business

[Sub-sections (4) and (5) (omitted) ]

#### CHAPTER III

### The Provincial Legislature

#### General

#### 60 Constitution of Provincial Legislatures —

(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty represented by the Governor and

(a) in the Provinces of Madras, Bombay, the United Provinces and Bihar two Chambers ,

(b) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature they shall be known respectively as the Legislative

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1 S 59 (2) of the Constitution Act only prohibits a duly authenticated order being called in question on one ground and one ground only, namely that it is not an order or instrument made or executed by the Governor. It does not prevent the courts from enquiring into the accuracy of a recital contained therein or from coming to the conclusion that the recital is inaccurate if there is sufficient evidence to prove its inaccuracy

Answers given by a Minister in the Legislature in his capacity and in discharge of his duties as Minister are admissible in evidence under sections 17, 18 and 20 of the Indian Evidence Act *King Emperor v. Sibnath Banerjee* [1914] F C R 1

Council and the Legislative Assembly and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly

**61 Composition of Chambers of Provincial Legislatures** — The composition of the Chamber or Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly

(3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule

**62 Sessions of the Legislature, prorogation and dissolution** — (1) The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least in every year and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session

(2) Subject to the provisions of this section, the Governor may from time to time

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit,

(b) prorogue the Chamber or Chambers

(c) dissolve the Legislative Assembly

*[Sub-section (3), omitted]*

**63 Right of Governor to address, and send message to, Chambers** — (1) The Governor may address the Legislative Assembly or, in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members

(2) The Governor may send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration

**64 Rights of ministers and Advocate-General as respects Chambers**—Every minister and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or, in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in and otherwise take part in the proceedings of any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote

**65 Officers of Chambers**—(1) Every Provincial Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be

(2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly, but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution

Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker

(4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature and, until provision in that behalf is so made, such salaries as the Governor may determine

(5) In the case of a Province having a Legislative Council, the foregoing provisions of this section (other than

the proviso to subsection (2) thereof) shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly, with the substitution of the titles 'President' and 'Deputy President' for the titles "Speaker" and 'Deputy Speaker' respectively, and with the substitution of references to the Council for references to the Assembly

**66 Voting in Chambers, power of Chambers to act notwithstanding vacancies and quorum**—(1) Save as in this Act otherwise expressly provided all questions in a Chamber, or a joint sitting of two Chambers, of a Provincial Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or President, or person acting as such

The Speaker or President, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes

(2) A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Provincial Legislative Assembly less than one-sixth of the total number of members of the Chamber are present, or if at any time during a meeting of a Provincial Legislative Council less than ten members are present, it shall be the duty of the Speaker or President or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of of the members, or as the case may be, at least ten members, are present

#### *Provisions as to Members of Legislatures*

**67 Oath of members**,—Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, or some person appointed by him, an oath according to the form set out in that behalf in the Fourth Schedule to this Act

**68 Vacation of seats**—(1) No person shall be a member of both Chambers of a Provincial Legislature, and rules made by the Governor shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other

[Subsection (2) (omitted) ]

(3) If a member of a Chamber--

(a) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section, or

(b) by writing under his hand addressed to the Governor resigns his seat  
his seat shall thereupon become vacant

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from meetings thereof the Chamber may declare his seat vacant

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days

**69 Disqualifications for membership**—(1) A person shall be disqualified for being chosen as and for being, a member of a Provincial Legislative Assembly or Legislative Council—

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder,

(b) if he is of unsound mind and stands so declared by a competent court,

(c) if he is an undischarged insolvent,

(d) if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act,

(e) If he has been convicted of any other offence before the date of the establishment of the Dominion by a court in British India, or on or after that date by a court in a Governor's or Chief Commissioner's Province or an Acceding State and sentenced to transportation or to imprisonment for not less than two years, unless

a period of five years, or such less period as the Governor, may allow in any particular case, has elapsed since his release ,

- (f) if, having been nominated as a candidate for the Dominion Legislature or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Dominion Legislature or the Provincial Legislature unless five years have elapsed from the date by which the return ought to have been lodged or the Governor has removed the disqualification

Provided that a disqualification under paragraph (f) of this sub section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor may in any particular case allow

(2) A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence

(3) Where a person who by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of sub-section (1) of this section, is at the date of the disqualification a member of a Chamber is at seat shall, notwithstanding anything in this or the last preceding section not become vacant by reason of the disqualification until three months have elapsed from the date ~~whereof an appeal or petition for revision is brought in respect of the conviction or the sentence until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section he shall not sit or vote~~

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Dominion or for a Province

**70 Penalty for sitting and voting when not qualified, or when disqualified**—If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by

the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Province

**71 Privileges, etc , of members**—(1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings

(2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the establishment of the Dominion enjoyed by members of that Chamber, or in the case of West Bengal and East Punjab, by members of the Provincial Legislative Assemblies of Bengal and the Punjab respectively

(3) Nothing in any existing law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner

(4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee so to do

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor

(5) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in and otherwise take part in the

proceedings of a Chamber as they apply in relation to members of the Legislature

**72 Salaries and allowances of members**—Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Provincial Legislature .

Provided that until other provision is so made members of the Legislative Assemblies of West Bengal and East Punjab shall be entitled to receive salaries and allowances at such rates and upon such conditions as were immediately before the establishment of the Dominion applicable in the case of members of the Legislative Assemblies of Bengal and the Punjab, respectively

### *Legislative Procedure*

**73 Introduction of Bills, etc**—(1) Subject to the special provisions of this part of this Act with respect to financial Bills a Bill may originate in either Chamber of the Legislature of a Province which has a Legislative Council

(2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly

(4) A Bill which is pending in the Legislative Assembly of a Province, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly

**74 Passing of Bills in Provinces having Legislative Councils**—(1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers .

(2) If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill

Provided that, if it appears to the Governor that the Bill



relates to finance, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers

Provided that at a joint sitting—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill,

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final

**75 Assent to Bills**—A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General

Provided that the Governor may return the Bill together with a message requesting that the Chamber or Chambers will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly

**76 Bills reserved for consideration**—(1) When a Bill is reserved by a Governor for the consideration of the Governor-General the Governor-General shall declare, either

*Government of India Act, 1935*

**(As adapted and modified)**

*Erratum*

Page 79, Section 78, sub-section (2) (b), after the word  
'expenditure' *add*

"Proposed to be made from the revenues of the Pro  
vince,  
and shall distinguish expenditure on revenue account from  
other expenditure"



that he assents in His Majesty's name to the Bill  
withholds assent therefrom

Provided that the Governor-General may, if he thinks fit, direct the Governor to return the Bill to the Chamber, or, as the case may be the Chambers of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly and, if it is again passed by them with or without amendment it shall be presented again to the Governor-General for his consideration

[Subsection (2) (omitted) ]

[Section 77 (omitted) ]

*Procedure in Financial matters*

**78 Annual financial statement**—(1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, in this Part of this Act referred to as the "annual financial statement"

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Province, and

(b) the sums required to meet other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of each Province—

(a) the salary and allowances of the Governor and other expenditure relating to his office for which provision is made by or under the Third Schedule to this Act,

(b) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt,

(c) the salaries and allowances of ministers, and of the Advocate-General,

(d) expenditure in respect of the salaries and allowances of judges of any High Court

- (e) expenditure connected with the administration of any areas which are for the time being excluded areas,
- (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal,
- (g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged

[Subsection (4) (omitted)]

**79. Procedure in Legislature with respect to estimates**—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this subsection shall be construed as preventing the discussion in the Legislature of those estimates, other than estimates relating to expenditure referred to in paragraph (a) of subsection (3) of the last preceding section

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein

(3) No demand for a grant shall be made except on the recommendation of the Governor

**80. Authentication of schedule of authorised expenditure**—(1) The Governor shall authenticate by his signature a schedule specifying—

- (a) the grants made by the Assembly under the last preceding section,
- (b) the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers

[Proviso omitted]

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Province

shall be deemed to be duly authorised unless it is specified in the schedule so authenticated

[Provided that expenditure from the revenues of the Province of West Bengal or East Punjab during the period beginning with the 15th day of August 1947 and ending with the 31st day of March 1948 may be authorized or ratified by general or special order of the Governor]

**81 Supplementary statements of expenditure**—If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein

**82. Special provisions as to financial Bills**—(1) A Bill or amendment making provision—

- (a) for imposing or increasing any tax, or
- (b) for regulating the borrowing of money or the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province, or
- (c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor and a Bill making such provision shall not be introduced in a Legislative Council.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand and payment of fees for licences or fees for services rendered

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province, shall not be passed by a Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill

83 (omitted)

*Procedure Generally*

**84 Rules of procedure** —(1) A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business

[Proviso omitted]

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers

<sup>1</sup> [(3) Until rules are made under this section the rules of procedure and standing orders in force immediately before the establishment of the Dominion with respect to the Legislative Assemblies of Bengal and the Punjab respectively, shall have effect in relation to the Legislative Assemblies of West Bengal and East Punjab, subject to such modifications and adaptations as may be made therein by the Speakers of those Assemblies ]

(4) At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section shall preside

85 (omitted)

**86 Restrictions on discussion in the Legislature -**

(1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties

In this sub-section the reference to a High Court shall be construed as including a reference to a court in an Acceding State which is a High Court for any of the purposes of Part IX of this Act

[Sub-section (2) (omitted) ]

**87 Courts not to inquire into proceedings of the Legislature** —(1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure

(2) No officer or other member of a Provincial Legislature, in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature, shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers

CHAPTER IV.

**Legislative Powers of Governors**

**88 Power of Governor to promulgate ordinances during recess of Legislature**—(1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action he may promulgate such ordinances as the circumstances appear to him to require

<sup>1</sup> [Provided that the Governor shall not, without instructions from the Governor-General, promulgate any such ordinance if an Act of the Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General, it had received the assent of the Governor-General]

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council

[Paragraph (b) omitted]

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void

Provided that for the purposes of the provisions in this Act relating to the effect of an Act of a Provincial Legislature or an existing law which is repugnant to an Act of the Dominion Legislature with respect to a matter enumerated in the Concurrent Legislative List, an ordinance promulgated under this section in pursuance of instructions from the Governor-General shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him

**89-90 (omitted)**



## CHAPTER V

**Excluded Areas and Partially Excluded Areas****91 <sup>1</sup>Excluded areas and partially excluded areas —**

In this Act the expressions "excluded area" and "partially excluded area" mean respectively such areas as were excluded or partially excluded areas immediately before the establishment of the Dominion

**92 Administration of excluded areas and partially excluded areas —**(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Dominion Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit

(2) The Governor may make regulations for the peace and good government of any area in a province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Dominion Legislature or of the Provincial Legislature, or any existing law, which is for the time being applicable to the area in question

Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him shall have no effect

[Subsection (3) (omitted)]

93. (omitted)

## PART IV

**The Chief Commissioners' Provinces**

**94 Chief Commissioners' Provinces —**(1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioner's Provinces as may be created under this Act

[Subsection (2) Omitted]

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1 Subst India (Provisional Constitution) Order, 1947.

(3) A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him

95 (Omitted)

96<sup>1</sup> [**The Andaman and Nicobar Islands**—The Governor-General may make regulations for the peace and good government of the Andaman and Nicobar Islands, and any regulations so made may repeal or amend any Act of the Dominion Legislature or any existing law which is for the time being applicable to the Province, and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Dominion Legislature which applies to the Province]

97 **Coorg**—Until other provision is made by, or in accordance with, a law made by the Constituent Assembly under sub section (1) of s 8 of the Indian Independence Act, 1947, the constitution powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg, shall continue unchanged

98 (Omitted)

## PART V

## Legislative Powers

## CHAPTER I.

## Distribution of Powers

**99 Extent of Dominion and Provincial laws —**

(1) Subject to the provisions of this Act, the Dominion Legislature may make laws (including laws having extra-territorial operation) for the whole or any part of the Dominion, and a Provincial Legislature may make laws for the Province or for any part thereof

[Sub-section (2) omitted]

The general legislative powers conferred respectively on the Federal Legislature and the Provincial Legislature by subsection (1) of s 99 are subject *inter alia* to the provisions of s 298 *Punjab Province v Daulat Singh* [1946] FCR 1

For observations of the Federal Court on the scope of the legislative power conferred by the section, see *The Governor General in Council v Balogh Investment Company* [1944] FCR 229, at p 251 *et seq*

**100 Subject-matter of Dominion and Provincial laws —**(1) Notwithstanding anything in the two next succeeding sub-sections, the Dominion Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List")

(2) Notwithstanding anything in the next succeeding sub-section, the Dominion Legislature, and, subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List")

(3) Subject to the two preceding sub-sections, the Provincial Legislature has, and the Dominion Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List")

(4) The Dominion Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof

For an exposition on the subject of Dominion and Provincial spheres of legislation, see the cases referred to below

A general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field. It is a fundamental assumption that the legislative powers of the Centre and the Provinces cannot have been intended to be in conflict with one another only if a reconciliation between the two proves impossible is it permissible to have recourse to the *non obstante* provisions in s 100 (1) and (3) of the Constitution Act, and in that case the Federal power will prevail. *In re the C P and Berar Act No XIV of 1938* [1939] FCR 18

The principles laid down by the Judicial Committee in decisions interpreting the provisions of the British North America Act distributing legislative power between the Dominion and the provincial parliaments, may be accepted as a guide for the interpretation of s 100 of the Constitution Act and the Lists in the Seventh Schedule of that Act. *ALS PPL Subrah manyan Chettiar v Mutuswami Goundan* (1940) FCR 189

In a recent case relating to the validity of the Money Lenders' Act, *Profulla Kumar Mukherjee v Bank of Commerce Ltd*, the Judicial Committee of the Privy Council quoted with approval the following passage in the judgment of Gwyer CJ in *Sudhahimanyan Chettiar's case (supra)* at p 201 — "It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one List touches also upon a subject in another List, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the main statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation in respect of matters in this List or in that." In Their Lordships' view the subjects must still overlap. Where they do, the question must be asked what in pith and substance is the effect of the enactment, of which complaint is made and in what List its true nature and character is to be found. As regards the relative precedence to be accorded to the three Legislative Lists in the Government of India Act, Their Lordships have held that where they come in conflict List I has priority over Lists III and II, and List III has priority over List II. As regards this priority itself, in each case one has to consider what the substance of an Act is and, whatever its ancillary effect, attribute it to the appropriate List according to its true character. See also *Bhola Prasad v King Emperor*, [1942] FCR 17, *Administrator, Lahore Municipality v Dawlat Ram Kapur*, [1942] FCR 31, and *Bank of Commerce Ltd v Anandya Krishna Basu* [1944] FCR 126

**101 Extent of power to legislate for States**—Nothing in this Act shall be construed as empowering the Dominion Legislature to make laws for an Acceding State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein

**102 Power of Dominion Legislature to legislate if an emergency is proclaimed**—(1) Notwithstanding anything in the preceding sections of this chapter, the Dominion Legislature shall, if the Governor-General has declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any

part thereof with respect to any of the matters enumerated in the Provincial Legislative List, <sup>1</sup>[or to make laws, whether or not for a Province or any part thereof with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act]

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Dominion law which the Dominion Legislature has under this section power to make, the Dominion law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Dominion law continues to have effect, be void

(3) A Proclamation of Emergency may be revoked by a subsequent Proclamation

(4) A law made by the Dominion Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period <sup>2</sup>

(5) A Proclamation of Emergency declaring that the security of India is threatened by war or by internal disturbance may be made before the actual occurrence of war or of any such disturbance if the Governor-General is satisfied that there is imminent danger thereof

For observations of Federal Court on power of Federal Legislature to make laws for a Province in an emergency, see *Piare Dusadh and others v King Emperor*, [1944] F C R 61 at p. 105 *et seq.*, *Basanta Chandra Ghose v King Emperor* (1944) F C R, 295, at pp 305 306

<sup>1</sup> Inserted by s 1 of the India (Proclamation of Emergency) Act, 1946 (See Annexure I)

<sup>2</sup> For amendment of this subsection made in 1943, see the India (Central Government and Legislature) Act, 1946 Annexure II

**103 Power of Dominion Legislature to legislate for two or more Provinces by consent**—If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Dominion Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Dominion Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province

**104 Residual powers of Legislation**—(1) The Governor-General may by public notification empower either the Dominion Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Dominion or of the Province, as the case may be, shall extend to the administration of any law so made unless the Governor-General otherwise directs

Sub-section (2) (omitted)

The Federal Legislature has no power to make a law providing for the levy of estate duty of the nature and with the incidence of estate duty under the English Law. The levy of such a duty is not a matter included in any of the Lists in the Seventh Schedule to the Act. *In re Levy of Estate Duty* (1944) F C R 317. Consequently the Federal Legislative List was amended to include a new item relating to Estate duty. See entry No. 56A of List I. A corresponding addition was also made in S 137 of the Act by the India (Estate Duty) Act, 1945

**105** (Omitted)

**106 Provisions as to legislation for giving effect to international agreements**—(1) The Dominion Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor or for an Acceding State except with the previous consent of the Ruler thereof

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Dominion Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State

(3) Nothing in this section applies in relation to any law which the Dominion Legislature has power to make for a

Province or, as the case may be, an Acceding State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry

**107\* Inconsistency between Dominion laws and Provincial, or State, laws** —(1) If any provision of a Provincial law is repugnant to any provision of a Dominion law which the Dominion Legislature is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Dominion law, whether passed before or after the Provincial law or, as the case may be, the existing law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Dominion law or an existing law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General, has received the assent of the Governor-General, the Provincial law shall in that Province prevail, but nevertheless the Dominion Legislature may at any time enact further legislation with respect to the same matter

Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General, shall be introduced or moved in the Dominion Legislature without the previous sanction of the Governor-General

(3) If any provision of a law of an Acceding State is repugnant to a Dominion law which extends to that State, the Dominion law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void

Where the problem is one of conflict between the provisions of a local law and those of a Central enactment, each being in reference to a subject on which it is authorised to legislate, it is the doctrine of repugnancy and not the doctrine of *ultra vires* that has to be applied. The question of severability arises only when an Act is to some extent *ultra vires*. *Bank of Commerce Ltd. v. Amulya Krishna Basu*, 1944 F C R 125

#### 108 (Omitted)

**109 Requirements as to sanctions and recommendations to be regarded as matters of procedure**

**only**—(1) Where under any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills

(2) No Act of the Dominion Legislature or a Provincial Legislature, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given—

(a) where the previous sanction or recommendation required was that of the Governor, either by the Governor, or by the Governor-General,

(b) where the previous sanction or recommendation required was that of the Governor-General, by the Governor-General

110—121 (Omitted)

## PART VI<sup>1</sup>

### Administrative relations between, Dominion, Provinces and States

#### *General*

**122 Obligation of units and Dominion**—(1) The executive authority of every Province and Acceding State shall be so exercised as to secure respect for the laws of the Dominion Legislature which apply in that Province or State

(2) The reference in sub-section (1) of this section to laws of the Dominion Legislature shall, in relation to any Province, include a reference to any existing law applying in that Province

(3) Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Dominion in any Province or Acceding State regard shall be had to the interest of that Province or State

123 (Omitted)

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<sup>1</sup> This part originally came into force on the 1st April, 1937, under para. 5 G of I (C T Prov) O



**124 Power of Dominion to confer powers, etc. on Provinces and States in certain cases** — (1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of an Acceding State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Dominion extends

(2) An Act of the Dominion Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties [or authorise the conferring of powers and the imposition of duties]<sup>1</sup> upon a Province or officers and authorities thereof

(3) An Act of the Dominion Legislature which extends to an Acceding State may confer powers and impose duties or authorize the conferring of powers and the imposition of duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler

(4) Where by virtue of this section, powers and duties have been conferred or imposed upon a Province or Acceding State or officers or authorities thereof there shall be paid by the Dominion to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties

**125 Administration of Dominion Acts in Indian States** — (1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor General and the Ruler of an Acceding State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Dominion Legislature which applies therein

(2) An agreement made under this section shall contain provisions enabling the Governor-General to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Dominion Government and if he is not so satisfied, the Governor-General may issue such directions to the Ruler as he thinks fit

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<sup>1</sup> Inserted by the Government of India Act (Amendment) Act, 1939 (2 & 3 Geo 6 Ch 66) (with effect from the 1st April, 1937)

(3) All courts shall take judicial notice of any agreement made under this section.

**126 Control of Dominion over Province in certain cases**—(1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Dominion and the executive authority of the Dominion shall extend to the giving of such directions to a Province as may appear to the Dominion Government to be necessary for that purpose

(2) The executive authority of the Dominion shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Dominion Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions

Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in the Dominion Legislature without the previous sanction of the Governor-General

(3) The executive authority of the Dominion shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance

Provided that nothing in this sub-section shall be taken as restricting the power of the Dominion to construct and maintain means of communication as part of its functions with respect to naval, military and air force works

(4) (Omitted)

(5) The executive authority of the Dominion shall also extend to the giving of directions to a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof

**[126 A** Where a Proclamation of Emergency is in operation whereby the Governor-General has declared that the security of India is threatened by war—

(a) the executive authority of the Dominion shall extend to the giving of directions to a Province as to the manner in which the executive authority thereof is to be exercised,

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<sup>1</sup> Inserted by the Govt of India Act (Amendment) Act 1939 (with effect from the 1st April 1937)

- (b) any power of the Dominion Legislature to make laws for a Province with respect to any matter shall include power to make laws as respects a Province conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Dominion or officers and authorities of the Dominion as respects that matter, notwithstanding that it is one with respect to which the Provincial Legislature also has power to make laws

Provided that no Bill or amendment which, as respects a Province, confers powers or imposes duties, or authorises the conferring of powers or the imposition of duties, upon the Dominion or upon officers or authorities of the Dominion in relation to such a matter as aforesaid shall be introduced or moved without the previous sanction of the Governor-General, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency ]

**127 Acquisition of land for Dominion purposes**—The Dominion may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Dominion Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Dominion or, if the land belongs to the Province, to transfer it to the Dominion on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India

**128 Duty of Ruler of a State as respects Dominion subjects**—(1) The executive authority of every Acceding State shall be so exercised as, not to impede or prejudice the exercise of the executive authority of the Dominion so far as it is exercisable in the State by virtue of a law of the Dominion Legislature which applies therein

(2) If it appears to the Governor-General that the Ruler of any Acceding State has in any way failed to fulfil his obligations under the preceding sub-section, the Governor-General, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit

Provided that if any question arises under this section as to whether the executive authority of the Dominion is exercisable in a State with respect to any matter or as to the extent

to which it is so exercisable, the question may, at the instance either of the Dominion or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act

*Broadcasting*

**129 Broadcasting**—(1) The Dominion Government shall not unreasonably refuse to entrust to the Government of any Province or the Ruler of any Acceding State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler—

(a) to construct and use transmitters in the Province or State,

(b) to regulate and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State

Provided that nothing in this sub-section shall be construed as requiring the Dominion Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Dominion Government or by persons authorised by the Dominion Government, or over the use of receiving apparatus by persons so authorised

(2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Dominion Government, including notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Dominion Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler

(3) Any Dominion laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section

(4) If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Dominion Government to entrust functions is unreasonable, the question shall be determined by an arbitrator appointed by the Chief Justice of India

(5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquillity of India or any part thereof

*Interference with Water Supplies.*

**130 Complaints as to interference with water supplies**—If it appears to the Government of any Governor's Province or to the Ruler of any Acceding State that the interests of that Province or State, or of any of the inhabitants thereof, in the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Acceding State, have been, or are likely to be, affected prejudicially by—

- (a) any executive action or legislation taken or passed, or proposed to be taken or passed, or
- (b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, the Government or Ruler may complain to the Governor-General

**131 Decision of complaints.**—(1) If the Governor-General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them<sup>1</sup>

(2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendation as they think proper

(3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report

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<sup>1</sup> See, for an instance the complaint made by Sind under this section regarding certain irrigation projects by the Punjab on the Indus and its tributaries. The Indus Commission was accordingly appointed by the Governor-General, under s.131 of the Act (see G. O. 1 Notification No 129 41 G G, (A) dated Sept 11, 1941. The Commission, which was presided over by Sir B N Rau reported in 1942

(4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court

(5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper

(6) Effect shall be given in any Province or State affected to any order made under this section by the Governor-General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnance, be void

(7) Subject as hereinafter provided the Governor-General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to, and report from, a Commission appointed as aforesaid he considers it proper so to do, vary any decision or order given or made under this section

(8) An order made by the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court

*Sub-section (9) (omitted)*

**132 Interference with water supplies of Chief Commissioner's Province**—If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any natural source of supply in any Governor's Province or Acceding State have been or are likely to be affected prejudicially by —

- (a) any executive action or legislation taken or passed or proposed to be taken or passed, or
- (b) the failure of any authority to exercise any of their powers,

with respect to the use, distribution or control of water from that source, he may, if he thinks fit refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General

**133 Jurisdiction of Courts excluded**—Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State or the Governor-General

**134 Ruler of State may exclude application of provisions as to water supply**—The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Acceding State unless the Ruler thereof has declared in his Instrument of Accession that those provisions are to apply in relation to his State

*Inter-Provincial Co operation.*

**135 Provisions with respect to an Inter-Provincial Council**—If at any time it appears to the Governor-General that the public interests would be served by the establishment of an inter-Provincial Council charged with the duty of—

- (a) inquiring into and advising upon disputes which may have arisen between Provinces,
- (b) investigating and discussing subjects in which some or all of the Provinces, or the Dominion and one or more of the Provinces, have a common interest, or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the Governor-General to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure

An order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council

PART VII <sup>1</sup>

Finance, Property, Contracts and Suits

CHAPTER I

Finance

*Distribution of Revenues between the Dominion and  
Dominion Units*

**136 Meaning of "revenues of Dominion" and revenues of Province** — Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and Acceding States, the expression "revenues of the Dominion" includes all revenues and public moneys raised or received by the Dominion, and the expression "revenues of the Province" includes all revenues and public moneys raised or received by a Province

**137. Certain succession duties, stamp duties, terminal taxes and taxes on fares and freights** — Duties in respect of succession to property, other than agricultural land, estate duty in respect of property other than agricultural land, such stamp duties as are mentioned in the Dominion Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Dominion but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioner's Provinces, shall not form part of the revenues of the Dominion, but shall be assigned to the Provinces and to the Acceding States if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the Dominion Legislature

Provided that the Dominion Legislature may at any time increase any of the said duties or taxes by a surcharge for Dominion purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Dominion.

**138 Taxes on income** — (1) Taxes on income other than agricultural income shall be levied and collected by the Dominion but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commis-

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<sup>1</sup> This part originally came into force on the 1st April, 1937, under para 3, G of I (C.T. Prov.) O



sioners' Provinces or to taxes payable in respect of Dominion emoluments, shall not form part of the revenues of the Dominion, but shall be assigned to the Provinces and to the Acceding States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed

Provided that—

- (a) the percentage originally prescribed under this subsection shall not be increased by any Order of the Governor-General,
- (b) the Dominion Legislature may at any time increase the said taxes by a surcharge for Dominion purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Dominion

For the purposes of this sub-section, in each financial year such percentage as may be prescribed, of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Dominion emoluments shall be deemed to represent proceeds attributable to Chief Commissioners' Provinces.

(2) Notwithstanding anything in the preceding subsection, the Dominion may retain out of the moneys assigned by that subsection to Provinces and States—

- (a) in each year of a prescribed period such sum as may be prescribed or if it is so prescribed the whole of those moneys, and
- (b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction

Provided that —

- (1) neither of the periods originally prescribed shall be reduced by any Order of the Governor-General
- (2) the Governor-General may in any year of the second prescribed period direct that the sum to be retained by the Dominion in that year shall be the sum retained in the preceding year,

and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Dominion, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Dominion Government requires him to do so

(3) Where an Act of the Dominion Legislature imposes a surcharge for Dominion purposes under this section, the Act shall provide for the payment by each Acceding State in which taxes on income are not leviable by the Dominion of a contribution to the revenues of the Dominion assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly

(4) In this section

"taxes on income" does not include a corporation tax,

"prescribed" means prescribed by Order of the Governor-General, and

"Dominion emoluments" includes all emoluments and pensions payable out of the revenues of the Dominion in respect of which income-tax is chargeable

139 (Omitted)

#### 140 Salt duties, excise duties and export duties —

(1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Dominion, but, if an Act of the Dominion Legislature so provides, there shall be paid out of the revenues of the Dominion to the Provinces and to the Acceding States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act

(2) Notwithstanding anything in the preceding subsection, such proportion as the Governor-General may by Order determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Dominion, but shall be assigned to the Provinces or Acceding States in which jute is grown in proportion to the respective amounts of jute grown therein

**141 Prior sanction of Governor-General required to Bills affecting taxation in which Provinces are interested**—(1) No Bill or amendment which imposes or varies any tax or duty in which the Provinces are interested, or which varies the meaning of the expression, "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such Federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in the Dominion Legislature except with the previous sanction of the Governor-General

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of a Federal taxation or the portion thereof retainable by the Dominion would not result in the balancing of Federal receipts and expenditure on revenue account in that year

(3) In this section the expression "tax or duty in which provinces are interested" means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any province, or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Dominion to any Provinces

#### **142 Grants from Dominion to certain Provinces --**

Such sums as may be prescribed by Order of the Governor-General shall be charged on the revenues of the Dominion in each year as grants-in-aid of the revenues of such Provinces as the Governor-General may determine to be in need of assistance, and different sums may be prescribed for different Provinces

[Proviso to section (omitted)]

**142A<sup>1</sup> Taxes on professions trades, callings and employments**—(1) Notwithstanding anything in section one hundred of this Act, no Provincial law relating to taxes for the benefit of a Province or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income

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<sup>1</sup> Ins s 2, the India and Burma Miscellaneous Amendments) Act, 1940.  
(3 & 4 Geo 6 ch 5)

(2) The total amount payable in respect of any one person to the Province or to any one Municipality, district board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirty-first day of March nineteen hundred and thirty-nine, exceed fifty rupees per annum

Provided that, if in the financial year ending with that date there was in force in the case of any Province or any such Municipality, board or authority a tax on professions, trades callings or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum, the preceding provisions of this subsection shall, unless for the time being provision to the contrary is made by a law of the Dominion Legislature, have effect in relation to that Province, Municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to that rate or maximum rate, or such lower rate, if any (being a rate greater than fifty rupees per annum), as may for the time being be fixed by a law of the Dominion Legislature, and any law of the Dominion Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specified Provinces, Municipalities, boards or authorities

(3) The fact that the Provincial Legislature has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting, in relation to professions, trades, callings and employments, the generality of the entry in the Dominion Legislative List relating to taxes on income

**143 Savings**—(1) Nothing in the foregoing provisions of this chapter affects any duties or taxes levied in any Acceding State otherwise than by virtue of an Act of the Dominion Legislature applying in the State.

(1A) Nothing in the foregoing provisions of this Chapter authorises the levy of any duty or tax by the Dominion in any Acceding State unless provision in that behalf is made in the Instrument of Accession of that State

(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, Municipality or other local authority or body for the purposes of the Province, Municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees

1 To be construed as reference to the 1st April, 1937, for a period of two years thereafter under para. 3 of the I. E. (T. P.) O

are mentioned in the Dominion Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Dominion Legislature.

**144 Calculation of "net proceeds," etc**—(1) In the foregoing provisions of this chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final

(2) Subject as aforesaid, and to any other express provision of this chapter, an Act of the Dominion Legislature may, in any case where under this Part of this Act the proceeds of any duty or tax are, or may be, assigned to any Province or State or a contribution is, or may be, made to the revenues of the Dominion by any State, provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters

#### **145-49 (Omitted)**

#### *Miscellaneous Financial Provisions*

**150 Expenditure defrayable out of Dominion revenues**—(1) No burden shall be imposed on the revenues of the Dominion or the Provinces except for the purposes of the Dominion or some part of the Dominion

(2) Subject as aforesaid, the Dominion or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Dominion Legislature or the Provincial Legislature as the case may be, may make laws.

**151 Provisions as to the custody of public moneys**—(1) Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Dominion or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Dominion or of the Province and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the

withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid

[Sub-section (2) (Omitted) ]

152. (Omitted )

**153 Previous sanction of Governor-General to legislation with respect to Reserve Bank, currency and coinage**—No Bill or amendment which affects the coinage or currency of the Dominion or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in the Dominion Legislature without the previous sanction of the Governor-General

**154 \*Exemption of certain public property from taxation**—Property vested in His Majesty for purposes of the Government of the Dominion shall, save in so far as any Dominion law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Acceding State

Provided that, until any Dominion law otherwise provides any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto

**[154A Exemptions from taxes on electricity**—Save in so far as any Dominion law may otherwise provide, no Provincial law or law of an Acceding State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

- (a) consumed by the Dominion Government, or sold to the Dominion Government for consumption by that Government, or
- (b) consumed in the construction, maintenance or operation of a Federal Railway by a railway company operating that railway, or sold to any such railway company for consumption in the construction, maintenance or operation of a Federal Railway,

and any such law imposing or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Dominion Government for consumption

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<sup>1</sup> Ins s 3, the India and Burma (Miscellaneous Amendments) Act, 1940, (3 & 4 Geo 6, Ch 5)

by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of a Federal Railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity

**155 Exemption of Provincial Governments and Rulers of Acceding States in respect of Federal taxation**—(1) Subject as hereinafter provided, the Government of a Province and the Ruler of an Acceding State shall not be liable to Federal taxation in respect of lands or buildings situate in India or income accruing, arising or received in India

Provided that—

(a) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of India outside that Province or by a Ruler in any part of India, nothing in the sub-section shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof,

(b) nothing in this sub-section shall exempt a Ruler from any Federal taxation in respect of any lands buildings or income being his personal property or personal income

(2) Nothing in this Act affects any exemption from, taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date

**156 Adjustment in respect of certain expenses and pensions**—Where under the provisions of this Act the expenses of any court or commission, or the pension payable to or in respect of a person who has served under the Crown in India, are charged on the revenues of the Dominion or the revenues of a Province, then if—

(a) in the case of a charge on the revenues of the Dominion, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province, or

(b) in the case of a charge on the revenues of a Province, the court or commission serves any of

the separate needs of the Dominion or another Province, or the person has served wholly or in part in connection with the affairs of the Dominion or another Province,

there shall be charged on and paid out of the revenues of the Province or as the case may be the revenues of the Dominion or of the other Province such contribution in respect of the expenses or pension as may be agreed or as may in default of agreement be determined by a arbitrator to be appointed by the Chief Justice of India

157-160 —(Omitted).

## CHAPTER II

### Borrowing and Audit

#### *Borrowing*

161 (Omitted)

**162 Borrowing by Dominion Government**—The executive authority of the Dominion extends to borrowing upon the security of the revenues of the Dominion within such limits, if any, as may from time to time be fixed by Act of the Dominion Legislature and to the giving of guarantees within such limits, if any, as may be so fixed

**163. Borrowing by Provincial Governments**—(1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits if any, as may be so fixed

(2) *The Dominion may, subject to such conditions, if any, as it may think fit to impose, make loans to, or so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Dominion*

(3) A Province may not without the consent of the Dominion borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the Province by the Dominion or by the Governor-General in Council, or in respect of which a guarantee has been given by the Dominion or by the Governor-General in Council

A consent under this sub-section may be granted subject to such conditions, if any as the Dominion may think fit to impose



(4) A consent required by the last preceding sub-section shall not be unreasonably withheld, nor shall the Dominion refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable, and, if any dispute arises whether a refusal of consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to an arbitrator appointed by the Chief Justice of India, whose decision shall be final

**164. Loans by Dominion Government to Acceding States**—The Dominion may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last but one preceding section are not exceeded give guarantees in respect of loans raised by, any Acceding State

**165** (Omitted)

*Audit and Accounts*

**166 Auditor-General of India**—(1) There shall be an Auditor-General of India, who shall be appointed by the Governor-General and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court

(2) The conditions of service of the Auditor-General shall be such as may be prescribed by Order of the Governor-General, and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Dominion and of the Provinces as may be prescribed by, or by rules made under, an Order of the Governor-General, or by any subsequent Act of the Dominion Legislature varying or extending such an Order

Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General,

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the Dominion and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues

**167 Provincial Auditor-General**—(1) If a Provincial Legislature passes an Act charging the salary of an Auditor-General for that Province on the revenues of the Province, an Auditor-General of the Province may be appointed by the Governor to perform the same duties and to exercise the same powers in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor-General of India, if an Auditor-General of the Province had not been appointed

Provided that no appointment of an Auditor-General in a Province shall be made until the expiration of at least three years from the date of the Act of the Provincial Legislature by which provision is made for an Auditor-General of that Province

(2) The provisions of the last preceding section shall apply in relation to the Auditor-General of a Province and his staff as they apply in relation to the Auditor-General of India and his staff, subject to the following modifications, that is to say—

- (a) person who is, or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India,
- (b) in sub-sections (2) and (3) of the said section, for the reference to the Dominion Legislature there shall be substituted a reference to the Provincial Legislature, and for the reference to the Governor-General there shall be substituted a reference to the Governor, and
- (c) in sub-section (4) of the said section for the reference to the revenues of the Dominion there shall be substituted a reference to the revenues of the Province

Provided that nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of Provinces as are mentioned in the next succeeding section

**168 Power of Auditor-General of India to give directions as to accounts.**—The accounts of the Dominion shall be kept in such form as the Auditor-General of India may, with the approval of the Governor-General, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of Provinces ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly

**169 Audit reports**—The reports<sup>+</sup> of the Auditor-General of India relating to the accounts of the Dominion shall be submitted to the Governor General, who shall cause them to be laid before the Dominion Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature

**170—171** (Omitted)

### CHAPTER III

#### Property, Contracts, Liabilities and Suits

**172—173** (Omitted).

**174 Property accruing by escheat or lapse, or as bona vacantia**—Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a Province, vest in His Majesty for the purposes of the Government of that Province, and shall in any other case vest in His Majesty for the purposes of the Government of the Dominion

Provided that any property which at the date when it accrued to His Majesty was in the possession or under the control of the Dominion Government or the Government of a Province shall, according as the purposes for which it was then used or held were purposes of the Dominion or of a Province, vest in His Majesty for the purposes of the Government of the Dominion or for the purposes of the Government of that Province

**175 Power to acquire property and to make contracts, etc**—(1) The executive authority of the Dominion and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for the purposes of the Government of the Dominion or of the Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for those purposes respectively, and to the making of contracts

[ Proviso—(Omitted) ]

(2) All property acquired for the purposes of the Dominion or of a Province, as the case may be, shall vest in His Majesty for those purposes

(3) All contracts made in the exercise of the executive authority of the Dominion or of a Province shall be expressed to be made by the Governor-General or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorise

(4) Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof

**176 Suits and proceedings**—(1) The Dominion may sue or be sued by the name of the Dominion of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent provisions of this chapter, may subject to any provisions which may be made by Act of the Dominion Legislature or a Provincial Legislature enacted by virtue of powers conferred on the Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed

[Sub-section (2) (Omitted),]

**177.** (Omitted)

**178 Special provisions as to existing loans, guarantees and other financial obligations**

[Sub-section (1) (Omitted)]

[Sub-section (2) (Omitted)]

(3) No deduction in respect of taxation imposed by or under any existing law or any law of the Dominion or a Provincial Legislature shall be made from any payment of principal or interest in respect of any securities, the interest whereon is payable in sterling, being a payment which would, but for the provisions of this Act, and of the Indian Independence Act 1947, have fallen to be made by the Secretary of State in Council

[Sub-sections (4)—(6) (Omitted)]

**179—199** (Omitted)

<sup>1</sup> Sections 181-189 (Part VIII) relate to Federal Railway Authority, they are also omitted

## PART IX

**The Judicature.**

## CHAPTER I

*The Federal Court*

**200<sup>1</sup> Establishment and constitution of Federal Court**—(1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other Judges as the Governor-General may deem necessary, but unless and until a resolution is passed by the Dominion Legislature approving an increase in the number of judges, the number of puisne judges shall not exceed six

(2) Every judge of the Federal Court shall be appointed by order of the Governor-General and shall hold office until he attains the age of sixty-five years

Provided that—

- (a) a judge may by resignation under his hand addressed to the Governor-General resign his office,
  - (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them, report that the judge ought on any such ground to be removed.
- (3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—
- (a) has been for at least five years a judge of a High Court, or
  - (b) is a barrister of England or Northern Ireland of at least ten years standing or a member of the Faculty of Advocates in Scotland of at least ten years standing, or

<sup>1</sup> The Federal Court was established on the 1st of October 1937, consisting of a Chief Justice and two puisne judges. Though a decade has passed since its establishment, the number of judges has remained the same, and the work of the Court has also been exclusively constitutional in character. Section 206 of the Act was not brought into operation either in 1937 or subsequently that is, prior to 15th August 1947 with the result that the civil appellate jurisdiction contemplated by the Act was never conferred on the court. It is now for the Dominion Legislature to consider what further jurisdiction should be conferred on the court. For the present, the Federal Court Order, 1947, does no more than continue the court as a Federal Court for the Dominion of India. (1)

(c) has been for at least ten years a pleader of a High Court or of two or more such Courts in succession

(d) (Omitted)

Provided that—

(ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this subsection to ten years there shall be substituted references to fifteen years

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included

In this sub-section the expression "High Court" includes a High Court in an Acceding State and any court which was a High Court in British India

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act

**201 Salaries etc of judges**—The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment and to such rights in respect of leave and pensions as may from time to time be fixed by the Governor-General

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment

**202 (1) Temporary appointment of acting Chief Justice and puisne Judges**—If the office of Chief Justice of India becomes vacant or if the Chief Justice by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person permanently appointed to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be performed by such one of the other judges of the court as the Governor-General may appoint as acting Chief Justice

**Power to appoint acting puisne judges of the Federal Court**—(2) If the office of any other judge of the Federal Court becomes vacant or if any such judge is appointed to

act temporarily as Chief Justice of India or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may appoint a Judge of a High Court who is duly qualified for appointment as a judge of the Federal Court to act temporarily as a judge of that court, and the person so appointed shall, unless the Governor-General thinks fit to revoke his appointment, be deemed to be a judge of the Federal Court until some person permanently appointed to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.

(3) If the Governor-General is satisfied, after considering a report from the Chief Justice of India—

- (a) that in view of some personal interest which any judge of the Federal Court has in the decision of any particular case, or of some part which any judge of the Federal Court has already taken, as judge or counsel or otherwise, in or in relation to any particular case (whether or not while it was before the Federal Court), that judge ought not to take part in the hearing and determination thereof, and
- (b) that without that judge there are not sufficient judges of the Federal Court available to sit for that purpose,

the Governor-General may appoint a judge of a High Court who is duly qualified for appointment as judge of the Federal Court to act temporarily as a judge of that court and the person so appointed shall, unless the Governor-General thinks fit to revoke his appointment, be deemed to be a judge of the Federal Court until that case has been heard and determined by the Federal Court.

**203 Seat of Federal Court**—The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

**204 Original jurisdiction of Federal Court**—(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Dominion, any of the Provinces or any of the Acceding States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder before the date of the establishment of the Dominion, or of an order made thereunder on or after that date, or the interpretation of the Indian Independence Act, 1947, or of any order made thereunder, or the extent of the legislative or executive authority vested in the Dominion by virtue of the Instrument of Accession of that State, or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Dominion Legislature, or otherwise concerns some matter with respect to which the Dominion Legislature has power to make laws for that State, or

(iii) arises under an agreement between that State and the Dominion or a Province, being an agreement, which expressly provides that the said jurisdiction shall extend to such a dispute, and in the case of an agreement with a Province, has been made with the approval of the Governor-General

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment

This section deals with the original jurisdiction of the Federal Court, and ss 205 and 207 with its appellate jurisdiction in appeals from High Courts in 'India' and Acceding States respectively. Explaining this section, the Solicitor General, speaking on the original Government of India Bill, observed as follows: "In drafting this clause we have followed the recommendations of the Joint Select Committee. We have passed clauses which specifically deal with the matter of suits being brought against the Province or the Federation. But there are many cases today in India in which private individuals have rights against and can sue the Federation. It would be most oppressive and inconvenient if any litigant who had a claim against the Federation had to go up from the far end of India to the central place where the Federal Court will sit to prosecute his claim. It would seem quite unnecessary in what I may call ordinary cases. But you may get cases where there is some question as to whether legislation is or is not *ultra vires*. Let (the case) go first to the local court. Let it be sifted and dealt with there, and let it go from there to the Federal Court. For these reasons, we believe that the scheme of the Bill, under which original and exclusive jurisdiction is confined to disputes between units of the new constitution is better." See also the provision made in s 225 for transfer of certain cases to High Courts.



So far, the original jurisdiction of the Federal Court has been invoked only in two cases *The United Provinces v The Governor General in Council* (1939) F C R 124, and *The Governor General in Council v The Prince of Madras* (1943) F C R 1. In the second case an appeal was preferred to His Majesty in Council, and it was dismissed.

**205 Appellate Jurisdiction of Federal Court in appeals from High Courts—**(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder before the date of the establishment of the Dominion or any order made thereunder on or after that date or as to the interpretation of the Indian Independence Act, 1947 or of any order made thereunder, and it shall be the duty of every High Court to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

The words "before the date of the establishment of the Dominion or any order made thereunder on or after that date or as to the interpretation of the Indian Independence Act, 1947, or of any order made thereunder" have been added by the India Prov Cons Order, 1947. The constitutional jurisdiction of the Court has thus been made comprehensive.

Section 205 imposes on the High Court the duty of considering and determining in every case as part of its judgment, decree or final order, the giving or withholding of a certificate, when the case involves a substantial question of law as to the interpretation of the Government of India Act or any Order in Council made thereunder. The jurisdiction to entertain an appeal from such judgment, decree or final order depends on such determination by the High Court, and accordingly such determination, whether it involves the granting or withholding of a certificate, should be recorded, not only for the information of the parties, but also for the certification of the Judicial Committee of the Privy Council and the Federal Court as to their jurisdiction to entertain an appeal. *Errol Mackay v Oswald Forbes*, (1939) 67 Ind App 64. In another case last year on the High Court not expressing any opinion as regards any constitutional point of substance being involved in the case, the appellant proceeded to the Privy Council with an application praying for special leave to appeal. On the refusal of the Privy Council to entertain the application the appellant moved the High Court for a certificate under s 205, which the High Court granted at that stage, and thereafter the matter went up in appeal to the Federal Court. *Gill v King Emperor* (1946) F C R 123.

The duty imposed by s 205 on every High Court in British India to consider in every case whether or not a substantial question of law is in-

volved is directory and not mandatory. That duty was only imposed on judges of High Courts in cases where there was a reasonable possibility that such a question may arise. Where therefore there was no possible ground for thinking that any such question could be involved in the appeal and there was no certificate by the High Court, His Majesty in Council had jurisdiction to hear the appeal. *Punjab Co-operative Bank Ltd v Commissioner of Income tax, Lahore*, (1940) 67 I A 464.

The words "judgment, decree or final order" in s 205 (!) of the Constitution Act do not limit the appellate jurisdiction of the Federal Court to civil cases. The Court has jurisdiction in criminal as well as civil cases. *Hari Ram Singh v The Crown* (1939) FCR 159.

The Judicial Committee of the Privy Council has observed that the condition of the law of *habeas corpus* in India, and the purpose and express words of s 205 of the Government of India Act, afford a contrast to the condition of the English law and the object and general terms of s 19 of the Judicature Act 1873. S 205 relates to both the civil and criminal jurisdiction of the High Courts and in the absence of an express exception of *habeas corpus* cases and in view of its terms and purpose, it cannot be limited by construction so as to exclude such cases from its operation. S 205 provides one of the exceptions referred to in s 404 of the Criminal Procedure Code. *King Emperor v Srinath Banerji*, (1945) FCR 195 (PC).

No appeal lies to the Federal Court in the absence of a certificate under Section 205 of the Government of India Act. A certificate is a condition precedent to every appeal. The Federal Court cannot question the refusal of a High Court to grant a certificate or investigate the reasons which prompted the refusal, if the High Court has given none. The Court cannot do indirectly what it cannot do directly. *Gauba v The Chief Justice and Judges of Lahore High Court* (1941) FCR 54. See also *Pashupati Bharati v Secretary of State for India*, (1939) FCR 13; *Lakshpatram v Behari Lal Misr*, (1939) FCR 121, and *Kishori Lal v Governor-in Council, Punjab*, (1940) FCR 12.

In *Hafiz Mohd Ahmed Suid Khan v Shyam Lal* 1944 A LJ 397 FB the Allahabad High Court has held that the test is not merely the importance of the question, but its importance to the case itself. If the facts of the case depend upon the consideration of that point it will be deemed to be "involved". "The Act is a new act and no light is available from any previous judicial pronouncement, but s 110 of the Civil Procedure Code is a section *pari materia*."

In a case turning on the question of the validity of s 11 of the Bihar Money Lenders' Act 1938, where the High Court at Patna had granted a certificate under s 205, it was contended that the certificate had become infructuous and ineffective and that the Federal Court had no jurisdiction to hear the appeal either on the constitutional issue or on any other ground on account of the fact that the said s 11 of the Bihar Act had, since the grant of the certificate, been repealed and is enacted with retrospective effect by the Provincial Legislature. The Federal Court held that when jurisdiction to hear an appeal is vested in the Court by the grant of a certificate under s 205, it cannot be divested by any subsequent event. A certificate once granted cannot be cancelled or abrogated. S 15 of the CPC has no application, and there is no inherent power to alter a decree or certificate, which was correct at the time when it was made or given, namely, by reason of the happening of some subsequent event. *Subhanand Choudhry v Apurba Krishna Mitra*, (1940) FCR 31. See also *Surendra Prasad Narayana Singh v Sri Gayadhar Prasad*, (1946) FCR 39.

When an appeal before the Federal Court is terminated by an order of remand directing the lower court to try the case afresh and pass the appropriate decree, the decree passed by that court after the remand can be questioned.

before the Federal Court only by a new and independent appeal, which must fulfil the requirements of s 205 *Suraj Narayan Anand v The N W P P*, [1942] FCR 113

Whether a suit lies under s 42 of the Specific Relief Act against a Provincial Government for a declaration that a provincial statute is *ultra vires*, and whether an appeal will lie to the Federal Court under s 205 from the judgment of a single judge of a High Court when the judgment is appealable to a Division Bench of the same High Court, left open (1943) F C R 73, [1945] FCR (J C) 111, at p 123

If a substantial question of law as to the interpretation of the Government of India Act or any Order in Council made thereunder is involved in a case heard by a single judge of a High Court, and a judgment, decree or final order is given in that case, a certificate under s 205 (1) of the Constitution Act not only may, but should be granted, and thereupon an appeal would lie direct to the Federal Court, even though under the Letters Patent of the Court, the aggrieved party could appeal to a Division Bench of the High Court. It is difficult to read out of s 205 or any other section of the Act any power or discretion on the score to refuse to hear a case in which a certificate has been granted, or to put an appellant on terms, i.e., right of appeal to the Division Bench should first be exercised, and it is doubtful whether the Federal Court has any such power or discretion *Rao Bahadur Kunwar Lal Singh v The Central Provinces & Berar* (1944) FCR 284

Under the principle of the ruling in *Colonial Sugar Refining Company v Irving* (1905) A C 369 the right to continue a duly instituted suit was in the nature of a vested right which could not be taken away except by a clear indication of intention to that effect. In the absence of such clear indication in the Constitution Act, the court in which the suit was instituted continued to have jurisdiction to proceed with the trial even with regard to properties situated in Burma, which ceased to be part of India from 1st April, 1937 *Venugopala Reddai v Krishnaswami Reddai* (1943) FCR 39

The Federal Court has power under this section and s 209 (1) to make such an order on an appeal as the Court below could have made if the case had been heard by them at the date on which the appeal was heard *Shyamala Kant Lal vs Rambhajan Singh* (1939) FCR 193

**206 Power of Dominion Legislature to enlarge appellate Jurisdiction**—(1) The Dominion Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment decree or final order of a High Court without any such certificate as aforesaid

(2) If the Dominion Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the Dominion Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts to His Majesty in Council, either with or without special leave

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, the Dominion Legislature without the previous sanction of the Governor-General

**207 Appellate Jurisdiction of Federal Court in appeals from High Courts in Acceding States**—(1) An appeal shall lie to the Federal Court from a High Court in an Acceding State on the ground that a question of law has been wrongly decided being a question which concerns the interpretation of this Act or of an Order in Council made thereunder before the date of the establishment of the Dominion, or an order made thereunder on or after that date, or concerns the interpretation of the Indian Independence Act, 1947, or of an order made thereunder or concerns the extent of the legislative or executive authority vested in the Dominion by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Dominion Legislature

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated and may return any case so stated in order that further facts may be stated therein

**208 Appeals to His Majesty in Council**—An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

- (a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute, which concerns the interpretation of this Act or of an Order in Council made thereunder before the date of the establishment of the Dominion or an order made thereunder on or after that date, or concerns the interpretation of the Indian Independence Act, 1947, or of an order made thereunder, or concerns the extent of the legislative or executive authority vested in the Dominion by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Dominion Legislature, without leave, and
- (b) in any other case, by leave of the Federal Court or of His Majesty in Council

In *Subrahmanyam Chettiar v Muttuswami Goundan* (1941) F. C R 4 the Federal Court observed as follows. The Court will not formulate in advance any code of rules for the granting or withholding of leave to appeal to His Majesty in Council. But the Court will not be disposed to grant leave to appeal, save in cases of real importance. Dealing with a batch of applications for leave to appeal in 1942, the Court added that it would not be disposed to encourage Indian litigants to seek for the determination of constitutional questions elsewhere than in their own Supreme Court (1942) F. C R 109. As

to special leave of His Majesty in Council, as early as 1940 the Board remarked An appeal from the Federal Court will not lightly be admitted, and only if it arises in a really substantial case *Hori Ram Singh v King Emperor* (1940) F C R 15 (P C)

**209 <sup>1</sup> Form of judgment on appeal**—(1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the court, pending the hearing of the appeal, and execution shall be stayed accordingly

The use of the word 'shall' in sub section (1) cannot reasonably be considered to mean that in every case the Federal Court is under an obligation to declare the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against. The form of the order to be passed by the Federal Court must necessarily vary according to the circumstances, and requirements of each case. This provision contemplates that the Federal Court should make a declaration and not itself pass an executable decree, because it has no machinery for executing decrees, but it does not follow that a High Court has only the status of an executing Court in respect of all matters heard on appeal by the Federal Court *Keshav Talpade v King Emperor* (1943) F C R 88

As regards costs between two Governments in suits, see *The United Provinces v Governor General in Council* (1939) F C R 124, and *Governor General in Council v the Province of Madras* (1943) F C R 1. See also (1939) F C R 18, at p 57

As regards Privy Council appeals involving constitutional questions between two Governments, reference may be made to the usual practice in Canadian appeals of making no order as to costs. See the Board's observation that the position in India though not strictly the same as in Canada, was very analogous [1945] F C R 194

**210 Enforcement of decrees and orders of Federal Court and orders as to discovery, etc**—(1) All authorities civil and judicial, throughout the Dominion, shall act in aid of the Federal Court

(2) The Federal Court shall have power to make any order for the purpose of securing the attendance of any person,

<sup>1</sup> For a discussion on the form of judgment on appeal, see *Keshav Talpade v The King Emperor* [1943] F C R 88

the discovery or production of any documents, or the investigation or punishment of any contempt of court<sup>1</sup>, which any High Court has power to make as respects the territory within its jurisdiction, and any such orders and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of a Governor's Province, Chief Commissioner's Province or Acceding State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part

(3) Nothing in this section—

(a) shall apply to any such order with respect to costs as is mentioned in subsection (2) of the last preceding section, or

(b) shall, as regards an Acceding State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Dominion Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court

**211 Letters of request to Acceding States**—Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in an Acceding State, or require the aid of the civil or judicial authorities in an Acceding State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require

**212 Law declared by Federal Court and Privy Council to be binding on all Courts**—The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in any Governor's Province or Chief Commissioner's Province, and, so far as respects the application and interpretation of this Act or any Order in Council or order thereunder, or of the Indian Independence Act, 1947, or of any order thereunder, or any matter with respect to which the Dominion Legislature has power to make laws in relation to the State, in any Acceding State

<sup>1</sup> The expression "any contempt of court" in this sub-section means "any act amounting to contempt of the Federal Court", *Purshottam Lal Jaitley v The King Emperor* [1944] F C R 364

**213 Power of Governor-General to consult Federal Court.**—(1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may refer the question to that court for consideration, and the court may after such hearing as they think fit, report to the Governor-General thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

**214 Rules of court, etc.**—(1) The Federal Court may from time to time, with the approval of the Governor-General, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges.

Provided that, if the Dominion Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

(3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in

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<sup>1</sup> For the views of the Court regarding advisory jurisdiction, see *In re Levy of Estate Duty* [1944] F C R 317. See also the observations of Gwyer O J in *In re the Allocation of Lands and Buildings in a Chief Commissioner's Province* (1943) F C R 20, at p 22.

this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment

(5) All proceedings in the Federal Court shall be in the English language

**215 Ancillary powers of Federal Court**—The Dominion Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act

**216 Expenses of Federal Court**—(1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Dominion, and any fees or other moneys taken by the court shall form part of those revenues

[Sub-section (2) (Omitted)]

**217. Construction of references to High Courts in States**—References in any provision of this Part of this Act to a High Court in an Acceding State shall be construed as references to any court which the Governor-General may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision

**218 Savings**—Nothing in this chapter shall be construed as conferring, or empowering the Dominion Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court is exercising jurisdiction on appeal from a court outside India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave

## CHAPTER II

### The High Courts in India

**219 Meaning of "High Court"**—(1) The following courts shall in relation to India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Patna and Nagpur, the High Court of East Punjab, the Chief Court in Oudh, any other court in India constituted or reconstituted under this chapter as a High Court, and any other comparable court in India which an Act of the appropriate Legislature may declare to be a High Court for the purposes of this Act



Provided that if provision is made by His Majesty by Letters Patent for the establishment of a High Court to replace any court or courts mentioned in this sub-section, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced

(2) The provisions of this chapter shall apply to every High Court in India

(3) In this Chapter, "India" means the territories comprised in the Governors' Provinces and Chief Commissioners' Provinces, and does not include any Acceding State

**220 Constitution of High courts**—(1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as the Governor-General may from time to time deem it necessary to appoint

Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as the Governor-General may by order fix in relation to that court

(2) Every judge of a High Court shall be appointed by the Governor-General and shall hold office until he attains the age of sixty years

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor resign his office,

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body if the Judicial Committee of the Privy Council, on reference being made to them, report that the judge ought on any such ground to be removed

(c) the office of a Judge shall be vacated by his being appointed to be a Judge of the Federal Court or of another High Court.

(3) A person shall not be qualified for appointment as a judge of a High Court, unless he—

(a) is a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing, or

- (b) is a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as or exercised the powers of, a district judge or
- (c) has for at least five years held a judicial office in India not inferior to that of a subordinate judge or judge of a small cause court, or
- (d) has for at least ten years been a pleader of any High Court or of two or more such Courts in succession

In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader as the case may be, shall be included and in computing the period during which a person has served as a Judge of a High Court, or been a pleader of a High Court, or held judicial office in India, any period before the establishment of the Dominion during which the person has served as a Judge or been a pleader of a High Court in British India or has held judicial office in India, as the case may be, shall be included

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act

**221 Salaries &c of judges**—The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions as may from time to time be fixed by order of the Governor-General

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment

**222 Temporary and additional judges**—(1) If the office of chief justice of a High Court becomes vacant, or if any such chief justice is by reason of absence, or for any other reason unable to perform the duties of his office, those duties shall, until some person permanently appointed to the vacant office has entered on the duties thereof, or until the

chief justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may think fit to appoint as acting Chief Justice

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a chief justice or is by reason of absence, or for any other reason unable to perform the duties of his office, the Governor-General may appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the Governor-General thinks fit to revoke his appointment be deemed to be a judge of that court until some person permanently appointed to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties

(5) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the Governor-General that the number of the judges of the court should be for the time being increased, the Governor-General may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify

**223 Jurisdiction of existing High Courts**—Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act, to the provisions of any order made under the Indian Independence Act, 1947, and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the establishment of the Dominion

Under the express terms of this section, it is within the power of the Indian Legislature to alter the jurisdiction and powers of High Courts, and the jurisdiction can also be taken away by any ordinance of the Governor General by virtue of s 311 (6) *King Emperor vs Benarsi Lal Sainia and others*, (1943) 13 C R 96. Confirmed on appeal by Judicial Committee, (1945) F C R 161. See also *Baunt Chandru Ghose vs King Emperor*, (1944) F C R 295

**224 Administrative functions of High Courts**—  
(1) Every High Court shall have superintendence over all

courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns ,
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ,
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts , and
- (d) settle tables of fees to be allowed to the sheriff attorneys, and all clerks and officers of courts

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision

**225 Transfer of certain cases to High Court for trial**—(1) If on an application made in accordance with the provisions of this section a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Dominion or Provincial Act, it shall exercise that power

(2) An application for the purposes of this section shall not be made except, in relation to a Dominion Act by the Advocate-General for the Dominion and, in relation to a Provincial Act by the Advocate-General for the Dominion or the Advocate General for the Province

**226 Jurisdiction in revenue matters**—(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in the Dominion

Legislature or in a Chamber of a Provincial Legislature without the previous sanction of the Governor-General or as the case may be, of the Governor

In a case where the income tax and super tax levied by the Indian Government was paid under protest, a suit was brought to declare that the assessment and demand of the tax were *ultra vires* the law making powers of the Indian Legislature. The Federal Court held that the restriction regarding jurisdiction imposed by s 226 is absolute, if the dispute concerns 'revenue', taking the word in its ordinary sense. The Section is not limited to steps taken in the collection of revenue, it applies also to the demand or assessment. The Court further held that the source of dividends paid to the plaintiff company by sterling companies was British Indian and in making dividends liable to income tax and super tax on that basis the Indian Legislature was not giving its law any extra territorial operation. Even if there be any extra territorial operation it was within the power of the Indian Legislature. *Governor-General in Council v Raleigh Investment Co Ltd* (1944) F C R 239. See also *Governor-General in Council v Shivomans Sugar Mills Ltd* [1946] F C R 40.

**227 Proceedings of High Courts to be in English**—All proceedings in every High Court shall be in the English language

**228 Expenses of High Courts**—(1) The administrative expenses of a High Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues

[Sub-section (2) (Omitted)]

**229 Power of His Majesty to constitute or reconstitute High Court by letters patent.**—(1) His Majesty if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts

(2) Where any Court is reconstituted or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation

**230 Extra-provincial jurisdiction of High Courts**—(1) The Governor-General may if satisfied that an

agreement in that behalf has been made between the Governments concerned, by order extend the jurisdiction of a High Court in any Province to any area in India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the establishment of the Dominion empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—

(a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction, or

(b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

**231. Saving and definitions —**(1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relinquish his office at any earlier age than he would have been required so to do if this Act had not been passed.

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges of a High Court, and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is—

situate in an area not forming part of a Province, by the Governor-General

## PART X.

### The Services of the Crown in India

[This Part except s. 232, originally came into force on the 1st April 1937 under para 3 of G.O. (G & T Pro) Order Ss 232-239, relating to Defence Services, have now been omitted]

#### CHAPTER I

#### Defence Services

Ss 232—239 (Omitted)

#### CHAPTER II

#### Civil Services.

#### General Provisions

**240 Tenure of office of persons employed in civil capacities in India**—(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid who having been appointed by the Secretary of State or the Secretary of State in Council continues after the establishment of the Dominion to serve under the Crown in India shall be dismissed from the service of His Majesty by any authority subordinate to the Governor-General or the Governor according as that person is serving in connection with the affairs of the Dominion or of a Province, and no other such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him

Provided that this sub-section shall not apply—

- (a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, or
- (b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to

give to that person an opportunity of showing cause

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General or, as the case may be the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post

The Federal Court has held that the provisions of this section are mandatory and overriding provisions, and cannot be qualified or restricted in the case of the subordinate ranks of the Police Forces in India by any conditions of service determined by or under the Acts relating to those forces. A distinction is to be drawn between the tenure on which an office is held and the incidents relating to service in the office. The rejection by a higher authority of an appeal against dismissal is not equivalent to a dismissal by that authority itself so as to satisfy the provisions of sub-section (2) of s 240 *Sury Narain Anand v North West Frontier Province*, (1941) F C R 37

The real point of the sub section is that the person who is to be dismissed or reduced in rank must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be informed of the grounds on which it is proposed to take such action, and he must also be given a reasonable opportunity of showing cause why such punishment should not be imposed. This sub section is a provision which, while it does not alter the tenure of office during His Majesty's pleasure (s 240 (1)) or the power of dismissal at will, does impose in certain cases certain statutory obligations to be carried out before dismissal is effected, breach of which will give to the person affected adversely a cause of action *Secretary of State for India v I W Lall*, (1945) F C R 103

In a recent case decided by the Federal Court the *Punjab Province v Pandit Tara Chand*, that Court has held that sub sections (2), (3) and (4) are statutory limitations upon the right of the Crown to dismiss its servants at will and that to the extent to which they go they are designed to confer security of tenure upon public servants. It is obvious that the prerogative right of the Crown to dismiss its servants at will having been given statutory form in sub section (1) of section 240 it can only be exercised subject to the limitations imposed by the remaining sub sections of that section, and it must follow as a necessary consequence that if any of those limitations is contravened the public servant concerned has a right to maintain an action against the Crown for appropriate relief. There is, in our judgment, no warrant for the proposition that that relief must be limited to a declaration and should not go beyond it.

## 241 Recruitment and conditions of service—(1)

Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall be made—



- (a) in the case of services of the Dominion, and posts in connection with the affairs of the Dominion, by the Governor-General or such person as he may direct ,
  - (b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct
- (2) Except as expressly provided by this Act the conditions of service of persons serving His Majesty in a civil capacity shall, subject to the provisions of this section, be such as may be prescribed—

- (a) in the case of persons serving in connection with the affairs of the Dominion, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose ,
- (b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose .

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class

- (3) The said rules shall be so framed as to secure—

- (a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty, in a civil capacity, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by the Governor-General or Governor, as the case may be ,
- (b) ~~that~~ every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

- (i) punishes or formally censures him , or
- (ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated , or
- (iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Governor-General or the Governor as the case may be,

(c) that every other person serving His Majesty in a civil capacity shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor

(4) Notwithstanding anything in this section, but subject to any other provision of this act, Acts of the appropriate Legislature may regulate the conditions of service of persons serving His Majesty in a civil capacity, and any rules made under this section shall have effect subject to the provisions of any such Act

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection

(5) No rules made under this section and no Act of any Legislature shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in such manner as may appear to him to be just and equitable

Provided that, where any such rule or Act is applicable to the case of any person the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act

**242 Application of preceding section to railway, customs, postal and telegraph services, and officials of courts —**

- (1) (Omitted)
- (2) (Omitted)

(3) In framing the rules for the regulation of recruitment to posts in the railway, customs, postal and telegraph services, the Governor General or person authorised by him in that

behalf shall have due regard to the past association of the Anglo-Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the remuneration attaching to such posts

(4) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court the last preceding section shall have effect as if, in the case of the Federal Court for any reference to the Governor-General in paragraph (a) of subsection (1), 1<sup>st</sup> paragraph (a) of sub-section (2) and in subsection (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of sub-section (1), in paragraph (b) of sub-section (2) and in sub-section (5) there were substituted a reference to the chief justice of the court

Provided that--

- (a) in the case of the Federal Court, the Governor-General and, in the case of a High Court, the Governor may require that in such cases as he may direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be,
- (b) rules made under the said sub-section (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor-General, as the case may be, the Governor

**243, Special provisions as to police**—Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively

#### **Recruitment by Secretary of State and Provisions as to certain posts**

244 (Omitted) <sup>b</sup>

245 (Omitted)

246 (Omitted)

**247 Conditions of service of persons originally recruited by Secretary of State**—The conditions of service of all persons who having been appointed by the Secretary of State or the Secretary of State in Council to a civil service of the Crown in India, continue on and after the date of the establishment of the Dominion to serve under the Government of the Dominion or of any Province, shall—

- (a) as respects persons serving in connection with the affairs of the Dominion, be such as may be prescribed by rules made by the Governor-General,
- (b) as respects persons serving in connection with the affairs of a Province—
  - (i) in regard to their pay leave, pensions, general rights to as medical attendance and any other matter which immediately before the establishment of the Dominion was regulated by rules made by the Secretary of State be such as may be prescribed by rules made by the Governor-General, and
  - (ii) in regard to any other matter be such as may be prescribed by rules made by the Governor of the Province

**248-252** (Omitted)

### Special Provisions as to Judicial Officers

**253 Judges of the Federal Court and High Courts**—(1) The provisions of this chapter shall not apply to the judges of the Federal Court or of any High Court

Provided that—

- (a) for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that court,
- (b) nothing in this section shall be construed as preventing the orders of the Governor-General relating to the salaries leave and pensions of judges of the Federal Court, or of any High Court, from applying to such of those judges as were, before they were appointed judges members of a civil service of the Crown in India, such of the rules relating to that service as may appear to the Governor-General to be properly applicable in relation to them,

- (c) nothing in this section shall be construed as excluding the office of judge of the Federal Court or of a High Court from the operation of the provisions of this chapter with respect to the eligibility for civil office of persons who are not British subjects

(2) Any pension which under the rules in force immediately before the commencement of Part III of this Act was payable to or in respect of any person who, having been a judge of a High Court within the meaning of this Act as originally enacted or of the High Court at Rangoon, retired before the commencement of the said Part III shall, notwithstanding anything in this Act or the Government of Burma Act, 1935 continue to be payable in accordance with those rules and shall be charged on the revenues of the Dominion

[Subsection(3) (Omitted),]

**254 District judges etc —**(1) Appointments of persons to be, and the posting and promotion of, district judges in any Province shall be made by the Governor of the Province, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment

(3) In this and the next succeeding section the expression "district judge" includes additional district judge joint district judge, assistant district judge chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge

**255 Subordinate civil judicial service —**(1) The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province

(2) In this section the expression 'subordinate civil judicial service' means a service, consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder

**256 Subordinate criminal magistracy**—No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from any person save after consultation with the district magistrate of the district in which he is working or with the Chief Presidency magistrate as the case may be

The direction laid down in Section 256 is directory and not mandatory, and non compliance with it would not render an appointment otherwise regularly and validly made ineffective or inoperative *Biswanath Khemka v. King Emperor*, [1945] F C R 89

### Special Provisions as to Political Department and provisions for protection of certain existing officers

**257-259** (Omitted)

**260 General provisions as to persons retiring before establishment of Dominion**—(1) Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who, having been appointed to a civil service of or a civil post under, the Crown in India, retired from the service of His Majesty before the establishment of the Dominion shall, if it would have been payable by the Government of any Province if the Indian Independence Act, 1947, had not been passed, be paid out of the revenues of

that Province or, if that Province has ceased to exist, of such new Province as may be determined by orders made under that Act and in any other case shall be paid out of the revenues of the Dominion of India or of Pakistan as may be so determined

(2) Any pension payable to or in respect of any person who having served in Burma or Aden, retired from an All India Service a Central Service Class I a Central Service Class II, a Railway Service Class I, or a Railway Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Dominion, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden

### *Miscellaneous*

#### 261 (Omitted)

**262 Eligibility for office of persons who are not British subjects**—(1) The Ruler or a subject of an Acceding State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Dominion, and the Governor General may declare that the Ruler or the subjects, or any named subject, of a specified Indian State which is not an Acceding State, or the natives, or any named native, of a specified tribal area or territory adjacent to India, shall be eligible to hold any such office

(2) The Governor of a Province may declare that the Ruler, or the subjects, or any named subject, of a specified Indian State or the natives, or any named native, of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province

[Sub-section (3) (Omitted) ]

(4) Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India

Provided that—

- (a) a person who at the end of March nineteen hundred and forty was in the permanent service of the Crown in India (within the meaning of this Act as originally enacted) shall not be ineligible to hold any office under the Crown in India by reason that he is not a British subject, and

- (b) the Governor-General or, in relation to a Province the Governor may authorise the temporary employment for any purpose of a person who is not a British subject

[Sub-section (5) (Omitted)]

**263 Joint Services & Posts**—If an agreement is made between the Dominion and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Dominion and one or more Provinces or common to two or more Provinces, or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Dominion or one Province, the agreement may make provision that the Governor-General or any Governor, or any Public Service Commission shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only

### CHAPTER III

#### Public Service Commissions

**264 Public Service Commissions**—(1) Subject to the provisions of this section, there shall be a Public Service Commission for the Dominion and a Public Service Commission for each Province

(2) Two or more Provinces may agree—

- (a) that there shall be one Public Service Commission for that group of Provinces or
- (b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces, and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this part of this Act to be discharged by the Governor of a Province are to be discharged

(3) The Public Service Commission for the Dominion if requested so to do by the Governor of a Province may, with the approval of the Governor-General, agree to serve all or any of the needs of the Province



(4) References in this Act to the Federal Public Service Commission or a Provincial Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Dominion, or, as the case may be, the Province as respects the particular matter in question

### **265 Composition and staff of Commissions—(1)**

The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General, and in the case of a Provincial Commission, by the Governor of the Province

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown

(2) In the case of the Federal Commission the Governor-General and, in the case of a Provincial Commission, the Governor of the Province, may by regulations—

(a) determine the number of members of the commission, their tenure of office and their conditions of service, and

(b) make provision with respect to the numbers of staff of the commission and their conditions of service

(3) On ceasing to hold office—

(a) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India

(b) the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India,

(c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province, and in the case of any other appointment, of the Governor-General

**266 Functions of Public Service Commissions—**

(1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Dominion and the services of the Province respectively

(2) It shall also be the duty of the Federal Public Service Commission if requested by any two or more Provinces so to do to assist those Provinces in framing and operating schemes of joint recruitment for their forest services and any other services for which candidates possessing special qualifications are required

(3) The Governor-General as respects services and posts in connection with the affairs of the Dominion, and the Governor as respects services and posts in connection with the affairs of a Province may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding sub-section, the Federal Commission or, as the case may be the Provincial Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts,
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers,
- (c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters,
- (d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Dominion or, as the case may be, the Province,

- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General, or, as the case may be, the Governor, may refer to them

- (4) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the communities or, in the case of the subordinate ranks of police forces, as respects any of the matters mentioned in paragraphs (a), (b) and (c) of sub-section (3) of this section

**267 Power to extend functions of Public Service Commissions**—Subject to the provisions of this section, an Act of the Dominion Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission

Provided that—

- (a) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General, or, as the case may be, of the Governor

[Sub-section (b) (Omitted).]

**268 Expenses of Public Service Commissions**—The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission shall be charged on the revenues of the Dominion or, as the case may be, the Province

Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provisions of Chapter II of this Part of this Act charged on the revenues of the Dominion

#### CHAPTER IV.

#### Chaplains.

269 (Omitted)

CHAPTER V

General

270 <sup>1</sup>(Omitted)

**271 Protection of public servants against prosecution and suits**—(1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Code of Criminal Procedure, 1898, or by sections eighty to eighty-two of the Code of Civil Procedure, 1908, shall be introduced or moved in the Dominion Legislature without the previous sanction of the Governor-General, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor

[Sub-section (2) (Omitted)]

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Code of Civil Procedure, 1908, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General so directs in the case of a person employed in connection with the affairs of the Dominion, or if the Governor so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Dominion or of the Province, as the case may be

272-274 (Omitted)

**275 Persons not be disqualified by sex for holding certain offices**—A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

(a) by the Governor-General in the case of services and posts in connection with the affairs of the Dominion,

(b) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province

Provided that any such agreement with respect to joint services and posts as is mentioned in Chapter II of this part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor

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<sup>1</sup> Omitted by the India (Provisional Constitution) Order, 1947. The section came under judicial review in a number of cases

**276 Transitional provisions**—Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act

**277 Interpretation etc**—(1) In this Part of this Act—the expressions “all-India Service,” “Central Service Class I,” “Central Service Class II” “Railway Service Class I” “Railway Service Class II” and “Provincial Service” mean respectively the services which were immediately before the commencement of Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act, and references to dismissal from His Majesty’s service include references to removal from His Majesty’s service  
[Sub-sections (2) and (3) (Omitted)]

#### PART XI

#### The Secretary of State, His Advisers and His Department

**278-284—A** (Omitted)

#### PART XII.

#### Miscellaneous and General

#### *The Crown and the Indian States*

**285-287** (Omitted)

*Idem*

**288** (Omitted)

#### *New Provinces and Alterations of Boundaries of Provinces*

**289.** (Omitted)

**290 Creation of new Provinces and alterations of boundaries of Provinces**—(1) Subject to the provisions of this section the Governor-General may by Order—

- (a) create a new Province,
- (b) increase the area of any Province
- (c) diminish the area of any Province
- (d) alter the boundaries of any Province;

Provided that, before making any such Order the Governor-General shall ascertain the views of the Government of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) An Order made under this sub-section may contain such provisions as the Governor-General may deem necessary or proper—

- (a) for varying the representation in the Dominion Legislature of any Governor's Province the boundaries of which are altered by the Order ,
- (b) for varying the composition of the Legislature of any such Province ,
- (c) where a new Governor's Province is created for constituting the Legislature thereof ,
- (d) for apportionments and adjustments of and in respect of assets and liabilities , and
- (e) for other supplemental, incidental and consequential matters

(3) In this section the expression "Province" means either a Governor's Province or a Chief Commissioner's Province

#### *Franchise*

**291. Power of Provincial legislature to make provision with respect to franchises and elections**—In so far as provision with respect to the matters hereinafter mentioned is not made by this Act in relation to any Provincial Legislature provision may be made by Act of that Legislature with respect to those matters or any of them, that is to say—

- (a) the delimitation of territorial constituencies for the purpose of elections under this Act ,
- (b) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls ,
- (c) the qualifications for being elected at such elections as a member of a legislative body ,
- (d) the filling of casual vacancies in any such body ,
- (e) the conduct of elections under this Act and the methods of voting thereat

- (f) the expenses of candidates at such elections,
- (g) corrupt practices and other offences at or in connection with such elections,
- (h) the decision of doubts and disputes arising out of, or in connection with, such elections,
- (i), matters ancillary to any such matter as aforesaid

*Provisions as to Certain Legal Matters* ,

**292-294** (Omitted)

**295 Provisions as to death sentences —**

[Subsection (1) (Omitted) ]

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment

**296 Courts of Appeal in revenue matters —**(1) No member of the Dominion Legislature or a Provincial Legislature shall be a member of any tribunal in a Governor's or Chief Commissioner's Province having jurisdiction to entertain appeals or revise decisions in revenue cases )

(2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the Governor shall constitute a tribunal, consisting of such person or persons as he may think fit, to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature

(3) There shall be paid to the members of any tribunal constituted under the last preceding sub-section, such salaries and allowances as the Governor may determine and those salaries and allowances shall be charged on the revenues of the Province

**297 Prohibition of certain restrictions on internal trade —**(1) No Provincial Legislature or Government shall—

- (a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power, to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description, or

- (b) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid

This provision only refers to legislation with respect to entry 27 and entry 29 in the Provincial Legislative List, it has no application to legislation with respect to anything in entry No 31. Provincial legislation deriving its power from any entry other than entry No 27 or entry No 29 of that List cannot therefore be challenged under s 297 (1) (a) *Bhola Prasad v King Emperor*, (1912) F C R 17

**298 Persons not to be subjected to disability by reason of race, religion, &c —**(1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring holding or disposing of property or carrying on any occupation, trade, business or profession in India

(2) Nothing in this section shall affect the operation of any law which—

- (a) prohibits, either absolutely or subject to exceptions, dispositions of agricultural land situated in any particular area and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area or as being an aboriginal tribe, in favour or for the benefit of any person belonging to that class,
- (b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law

[Subsection (3) (Omitted) \*]

(4) In paragraph (a) of sub section (2) of this section, 'agricultural land', in relation to any area where there is in force immediately before the commencement of Part III of this Act any law the operation of which is to any extent saved by the



said paragraph (a), includes all such property and rights in or over property as are included in the expression 'land' as defined for the purposes of that law as then in force

Those portions of s 15 of the Punjab Pre-emption Act which confer upon the heirs of a vendor a right of pre-emption in respect of sales of lands are not repugnant to the provisions of s 298 (1). The grant of a right to one person to acquire property in preference to other persons does not amount to a prohibition against the acquisition or holding of property by those persons. *Mohamud Hussain v Sajawal Baksh*, (1944) F O R 230

The Madras Temple Entry Authorization and Indemnity Act 1939, does not contravene s 298 inasmuch as even assuming that the rights of caste Hindus which have been affected by that Act were "property" within the meaning of that word in the section, the legislation does not amount to a prohibition of the holding of such property on the ground only of religion. *Manikhasundara Bhattar v R S Nayudu*, (1946) F C R 67

The proper test as to whether there is a contravention of sub-section (1) of s 298 is to ascertain the reaction of the impugned Act on the personal right conferred by the sub-section. The general legislative powers conferred respectively on the Federal Legislature and the Provincial Legislature by s 49 (1) of the Act are subject *inter alia*, to the provisions of s 298. *Punjab Province v Daulat Singh* (1946) F C R 1 (P C)

**299 Compulsory acquisition of land, &c —**(1) No person shall be deprived of his property save by authority of law.

(2) Neither the Dominion nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land or any commercial or industrial undertaking or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation or specifies the principle on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in the Dominion Legislature without the previous sanction of the Governor-General, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

300. (Omitted)

301 Repeal of s 18 of 21 Geo 3 c 70, and s 12 of 37 Geo 3 c 142—Section eighteen of the East India Company Act, 1780, and section twelve of the East India Act, 1797 (being obsolete enactments containing savings for native law and custom) are hereby repealed,

*High Commissioner*

302. (Omitted)

*General Provisions*

303 Provisions as to Sheriff of Calcutta—(1) The Sheriff of Calcutta shall be appointed annually by the Governor of West Bengal from a panel of three persons to be nominated on the occasion of each vacancy by the High Court in Calcutta

(2) The Sheriff shall hold office during the pleasure of the Governor and shall be entitled to such remuneration as the Governor may determine and no other remuneration

[Subsection (3) (Omitted)]

304 Persons acting, as Governor-General or Governor—Any person appointed by His Majesty to act as Governor-General or as the Governor of a Province during the absence of the Governor-General or the Governor from India, or during any period during which the Governor-General or the Governor is for any reason unable to perform the duties of his office, shall during, and in respect of, the period while he is so acting have all the powers and immunities, and be subject to all the duties of, the Governor-General or Governor, as the case may be, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto while he is acting as Governor-General or Governor

305 Secretarial staff of Governor-General and Governor—(1) The Governor-General and every Governor shall have his own secretarial staff to be appointed by him

(2) The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them shall be such as the Governor-General or, as the case may be, the Governor may determine, and the said salaries and allowances and the expenses incurred in providing the said accommodation and facilities shall be charged on the revenues of the Dominion or, as the case may be, the Province.

305A (Omitted)

**306 Protection of Governor-General, Governor or Secretary of State**—(1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General or against the Governor of a Province, whether in a personal capacity or otherwise, and except with the sanction of the Governor-General no proceedings whatsoever shall lie in any court in India against any person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in its relation with Indian States, the Governor of a Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Dominion, or a Province, such proceedings as are mentioned in Chapter III of Part VII of this Act

[Subsection (2) (Omitted)]

**307-310** (Omitted)

#### *Interpretation*

**311<sup>1</sup> Interpretation, &c.**—[Sub-section (1) (Omitted)]

(2) In this Act unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say —

“agricultural income” means agricultural income as defined for the purposes of the enactments relating to Indian income-tax

“borrow” includes the raising of money by the grant of annuities and “loan” shall be construed accordingly ;

“chief justice” includes in relation to a High Court a chief judge or judicial commissioner, and “judge” includes an additional judicial commissioner ,

[“corporation tax” means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled —

<sup>1</sup> For the meaning of ‘agricultural income’, see *Hulas Narain Singh v Province of Bihar*, (1942) F C R 1, at p 5, *et seq*

By virtue of s. 223 of the Act sub section (6) of s 311 enables the Governor General by an ordinance to take away the jurisdiction and powers of any High Courts *King Emperor v Benarsi Lal Sarma and others*, (1943) FOR 96 Confirmed on appeal by Privy Council (1945), F C R 151 (P C),

- (a) that it is not chargeable in respect of agricultural income ,
  - (b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals ,
  - (c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals
- ‘corresponding Province’ means in case of doubt such Province as may be determined by the Governor-General to be the corresponding Province for the particular purpose in question ,
- “debt” includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and “debt charges” shall be construed accordingly ,
- “estate duty” means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under the Dominion or Provincial laws relating to the duty, of all property passing upon death or deemed under the provisions of the said laws, so to pass ,
- “existing law” means any law, ordinance, order, bye-law, rule or regulation passed or made before the establishment of the Dominion by any legislature, authority or person in any territories which were for the time being comprised in British India, being a legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation ,
- “goods” includes all materials, commodities, and articles ,
- “guarantee” includes any obligation undertaken before the commencement of Part III of this Act to make payments in the event of the profits of an undertaking falling short of a specified amount ,

"High Court" does not, except where it is expressly so provided, include a High Court in an Acceding State ,

"Local Government" means any such Governor in Council, Governor acting with ministers, Lieutenant-Governor in Council, Lieutenant-Governor or Chief Commissioner as was at the relevant time a Local Government for the purposes of the Government of India Act or any Act repealed by that Act, but does not, save where the context otherwise requires, include any local Government in Burma or Aden ,

"pension" in relation to persons in or formerly in the service of the Crown means a pension, whether contributory or not, or any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ,

"pleader" includes advocate ,

"Provincial Act" and 'Provincial law" mean, subject to the provisions of this section, an Act passed or law made by a Provincial Legislature established under this Act ,

"public notification" means a notification in the Gazette of India or, as the case may be, the official Gazette of a Province ,

"securities" includes stock ,

'taxation" includes the imposition of any tax or impost whether general or local or special, and "tax" shall be construed accordingly ,

"tax on income" includes a tax in the nature of an excess profits tax ,

"railway" includes a tramway not wholly within a municipal area ,

"federal railway" does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway ,

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\* 1 Words 'in India, Burma or Aden' Omitted by India (Prov Cons) Order, 1947

"Indian State railway" means a railway owned by a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Dominion Government, or any company operating a federal railway,

"minor railway" means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not, and

"unit" means a Governor's Province, a Chief Commissioner's Province or an Accession State.

Subsections (3)–(5) (Omitted)

(6) Any reference in this Act to Dominion Acts or laws, or Provincial Acts or laws, or to Acts or laws of the Dominion or a Provincial Legislature, shall be construed as including a reference to an ordinance made by the Governor-General or, as the case may be, to an ordinance made by a Governor

(7) References in this Act to the taking of an oath include references to the making of an affirmation

#### PART XIII.

##### Transitional Provisions

312-319. (Omitted)

#### PART XIV

##### Commencement, Repeals, etc

320. (Omitted)

321 **Repeals**—The Government of India Act shall be repealed and the other Acts mentioned in the Tenth Schedule to this Act shall also be repealed to the extent specified in the third column of that Schedule

Provided that—

(a) nothing in this section shall affect the Preamble to the Government of India Act, 1919 (9 & 10 Geo 5 c 101),

(b) without prejudice to any other provisions of this Act, to the provisions of the Government of Burma Act, 1935, and to the provisions of the Interpretation Act, 1889 relating to the effect

of repeals, this repeal shall not affect any appointment made under any enactment so repealed to any office, and any such appointment shall have effect as if it were an appointment to the corresponding office under this Act or the Government of Burma Act, 1935

In a case turning on the validity of the Hindu Women's Rights to Property Act it was contended that on the coming into force of the Government of India Act, 1935, all incomplete measures of legislation under the previous Government of India Act lapsed. The Federal Court held that even if the theory of repeal and re enactment was applicable s 38 (2) of the Interpretation Act would cure any possible invalidity on that score as the Legislative Assembly had passed the Hindu Women's Rights to Property Bill before the repeal under s. 321 came into force. *Umayal Ach v Lakshmi Ach*, (1945) F C R 1

# SCHEDULES

As adapted and modified by the Prov. Cons. Orders)

## FIRST SCHEDULE

[ Omitted ]

## SECOND SCHEDULE

[ Omitted ]

## THIRD SCHEDULE

### Provisions as to Governor-General and Governors of Provinces

1 There shall be paid to the Governor-General and to the Governors of the Provinces the following annual salaries, that is to say —

The Governor-General	250,800 rupees
The Governor of a Province	66,000 „

Provided that the annual salary payable to any person who having been the Governor of a Province immediately before the 15th day of August, 1947, continues to be the Governor of that Province, shall be the same as before that date

2 There shall be paid to the Governor-General and to the Governors such allowances for expenses in respect of equipment and travelling upon appointment and such allowances during their terms of office as may from time to time be fixed, as respects the Governor-General by Act of the Dominion Legislature, and as respects Governor by order of the Governor-General, and such provision shall be made for enabling the Governor-General and the Governors to discharge conveniently and with dignity the duties of their offices as may be determined.

3 While the Governor-General or a Governor is absent on leave, he shall in lieu of his salary be entitled to such leave allowance as may be fixed by such an Act, or, as the case may be, an order as aforesaid

4 There shall be granted to and in respect of the Governor-General and the Governor of every Province such customs privileges as may be specified by such an Act, or, as the case may be, an order as aforesaid

5 While any person appointed to act as Governor-General or as a Governor is so acting, he shall be entitled to the same salary and, save as may be otherwise provided by such an Act, or, as the case may be, an order as aforesaid, the same allowances and privileges as the Governor-General or that Governor



6 Any sums required to give effect to the provisions of this Schedule shall, in the case of the Governor-General or a person acting as such, be paid out of and charged on the revenues of the Dominion and, in the case of a Governor or a person acting as such, be paid out of and charged on the revenues of the Province

7 Until other provision is made by Act of the Dominion Legislature, the Governor-General shall be entitled to the same allowances and privileges as he was entitled to immediately before the date of the establishment of the Dominion under the rules and orders then in force

#### FOURTH SCHEDULE

##### Forms of Oaths or Affirmations.

(Sections 67, 200, 220)

##### 1

Form of oath or affirmation to be taken or made by a member of a Legislature:—

"I, A B, having been elected (or nominated or appointed) a member of this Council (or Assembly), do solemnly swear (or affirm) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully discharge the duty upon which I am about to enter"

##### 2

Form of judicial oath or affirmation —

"I, A B, having been appointed Chief Justice (or a judge) of the Court do solemnly swear (or affirm) that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment"

#### FIFTH SCHEDULE

(Section 61)

##### Composition of Provincial Legislatures

##### General qualification for Membership

1 A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

- (a) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Dominion or, if it is so prescribed with respect to

any Province, the Ruler or a subject of any prescribed Indian State, and

- (b) is, in the case of a seat in a Legislative Assembly not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty years of age, and
- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case

2 Upon the expiration of the term for which he is chosen to serve as a member of a Provincial Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term

*Legislative Assemblies*

3 The allocation of seats in Provincial Legislative Assemblies shall be as shown in the relevant Table of Seats appended to this Schedule

4. In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

- (i) the number specified in the third column shall be general seats of which the number specified in the fourth column shall be reserved for members of the scheduled castes and, in the case of Bombay, seven shall be reserved for Maráthas,
- (ii) the numbers specified in the next nine columns shall be the numbers of seats to be filled by persons chosen to represent respectively—(a) backward areas and backward tribes, (b) the Sikh community, (c) the Muhammadan community, (d) the Anglo-Indian community, [(e) omitted], (f) the Indian Christian community, (g) the interests of commerce, industry, mining and planning, (h) landholders, (i) universities, and (j) the interests of labour, and
- (iii) the numbers specified in the last five columns shall be the numbers of seats (being either general seats, Sikh seats, Muhammadan seats, Anglo-Indian seats or Indian Christian seats) reserved for women,

5 A Province, exclusive of any portion thereof which the Governor General may by order declare unsuitable for inclusion in any constituency or in any constituency

(1) for the election of persons to fill the general seats;

- (ii) for the election of persons to fill the Sikh seats, if any,
- (iii) for the election of persons to fill the Muham-  
madan seats,
- (vi) for the election of persons to fill the Anglo-  
Indian seats, if any,
- (v) (Omitted) and
- (vi) except in the case of Bihar, for the election of  
persons to fill the Indian Christian seats, if any.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

7. In a province in which any general seats are reserved for members of the scheduled castes, all members of those castes who are entitled to vote in a constituency in which any seat is so reserved shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved and no member of those castes not elected as a candidate at such an election shall be qualified to hold—

- (a) a seat so reserved in that constituency ,  
(b) if it is so prescribed as respects that Province,  
any seat in that constituency

In relation to bye-elections this paragraph shall have effect with such adaptations and modifications as may be prescribed

8 The persons to fill the seats specified in columns four to sixteen to eighteen of the Table of Seats as Seats to be filled

by women shall be chosen in territorial constituencies which shall be either—

- (a) constituencies formed under paragraph five of this Schedule, or
- (b) constituencies specially formed for the purpose of electing women members

9. The provisions of the Sixth Schedule to this Act shall have effect with respect to the persons who are entitled to vote at elections in the territorial constituencies mentioned in paragraphs five and eight of this Schedule

10 In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives of labour, persons to fill those seats, and in Bihar the person to fill the Indian Christian seat, shall be chosen in such manner as may be prescribed

Provided that in a Province in which any seats are to be filled by representatives of backward areas or backward tribes some or all of those seats may, if it is so prescribed, be treated in the prescribed manner as additional general seats to be reserved for representatives of such areas or tribes

11 (Omitted)

12 A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a Province unless—

- (a) in the case of a seat to be filled by a woman, by an Indian Christian, by a representative of backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed, and
- (b) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province,

*Legislative Councils.*

13 The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table of Seats appended to this Schedule.

14 In the Legislative Council of each Province specified in the first column of the Table of Seats there shall be

the number of seats specified in the second column opposite to that Province and of those seats—

- (a) the number specified in the third column shall be general seats,
- (b) the numbers specified in the fourth and fifth columns shall be seats to be filled by persons chosen to represent respectively the Muhammadan community and the Indian Christian community,
- (c) the number specified in the sixth column shall be seats to be filled by persons elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote, and
- (d) the number specified in the seventh column shall be seats to be filled by persons chosen by the Governor.

15 A Province, exclusive of any portion thereof which the Governor-General may by order declare unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (i) for the purpose of electing persons to fill the general seats,
- (ii) for the purpose of electing persons to fill the Muhammadan seats,
- (iii) (Omitted)
- (iv) for the purpose of electing persons to fill the Indian Christian seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency

16 At an election in a constituency to fill a general seat, persons entitled to vote in a Muhammadan constituency or an Indian Christian constituency shall not be entitled to vote,

*In the case of a Muhammadan constituency, or an Indian Christian constituency no person shall be entitled to vote who is not, as the case may be, a Muhammadan or an Indian Christian*

17 The qualifications entitling a person to vote in territorial constituencies at elections of members of a Provincial Legislative Council, and the qualifications to be possessed by members of such Councils, shall be such as may be prescribed

18 The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council the Governor shall make by order such provision as he thinks fit, by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office

*General*

19 In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say,—

'a European' means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India or Pakistan or any Indian State,

'an Anglo-Indian' means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India, Pakistan or an Indian State,

'an Indian Christian' means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian,

'the scheduled castes' means such castes, races or tribes or parts or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to the Governor-General to correspond to the classes of persons formerly known as "the depressed classes" as the Governor-General may by order specify,

"backward areas" and "backward tribes" mean respectively such areas and tribes as the Governor General may from time to time by order declare to be areas and tribes to which a special system of representation is more appropriate, and

prescribed" means prescribed by order of the Governor-General or, so far as regards any matter which under this Act the Provincial Legislature or the Governor are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph

For the purposes of this paragraph, a person shall be deemed to be a native of India or Pakistan or an Indian State if, and only if, he is a person domiciled in India, Pakistan or an Indian State and born of parents habitually resident in the territories comprised therein and not established there for temporary purposes only

20 In so far as provision with respect to any matter is not made by this Act or by order of the Governor-General or, after the constitution of the Provincial Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor may make rules for carrying into effect the foregoing provisions of this Schedule and the provisions of the Sixth Schedule and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to—

- (i) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies,
- (ii) the nomination of candidates,
- (iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are reserved for members of the scheduled classes, or in the case of Bombay for Marathas, or where certain of the seats allotted to any community must be held by a woman or by a specified type of landholder;

- (iv) the expenses of candidates at elections ,
- (v) corrupt practices and other offences at or in connection with elections
- (vi) the decision of doubts arising out of or in connection with elections , and
- (vii) the manner in which the rules are to be carried into effect



# TABLE OF SEATS PROVINCIAL LEGISLATIVE ASSEMBLIES

Province																		
	Total Seats	General Seats		General Seats reserved for Scheduled Castes	Seats for representatives of backward areas and tribes	Sikh Seats	Muhammadan Seats	Anglo Indian Seats	Indian Christian Seats	Seats for representatives of commerce, industry, mining & planting	Landholders Seats	University Seats	Seats for representatives of labour	Seats of Women				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Madras	212	146	30	1	—	28	2	8	6	1	6	5	—	1	—	1	—	1
Bombay	172	114	15	1	—	29	2	3	7	2	1	7	5	—	1	—	—	—
United Provinces	226	140	20	—	—	64	1	2	3	6	1	3	4	—	2	—	—	—
Bihar	150	86	15	7	—	39	1	1	4	4	1	3	3	—	1	—	—	—
Central Provinces & Berar	111	64	20	1	—	14	1	—	2	3	1	2	3	—	—	—	—	—
West Bengal	90	44	14	—	—	21	3	1	7	2	1	8	1	—	1	—	1	—
East Punjab	81	31	6	—	—	20	23	—	—	1	2	1	2	—	1	—	—	—
Assam	71	37	5	9	—	16	—	1	4	—	—	3	1	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	1	1	2	—	1	2	—	—	—	—	—

In Bombay seven of the General Seats shall be reserved for Marathas  
In Assam and Orissa the Seats reserved for women shall be non communal seats

**TABLE OF SEATS.**  
**PROVINCIAL LEGISLATIVE COUNCILS**

1 Province	2 Total of Seats	3 General Seats	4 Muham- madan Seats	5 Indian Christian Seats,	6 Seats to be filled by Legislative Assembly	7 Seats to be filled by Governor
Madras	Not less than 53 Not more than 55	35	7	3		Not less than 8 Not more than 10
Bombay	Not less than 28 Not more than 29	20	5	.	.	Not less than 3 Not more than 4
United Provinces	Not less than 57 Not more than 59	34	17	..	.	Not less than 6 Not more than 8
Bihar	Not less than 28 Not more than 29	9	4	..	12	Not less than 3 Not more than 4

**SIXTH SCHEDULE,**  
*Schedule 5 (9)*  
**Provisions as to Franchise,**  
**Part I**  
*General*

1. There shall be an electoral roll for every territorial constituency and no person who is not, and, except as expressly provided by this Schedule, every person who is, for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency

2 The electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date, in this Schedule referred to as "the prescribed date," as may be directed in each case by the Governor

3 No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of twenty-one years and is either—

- (a) a British subject, or
- (b) the Ruler or a subject of an Acceding State, or
- (c) if and so far as it is so prescribed with respect to any Province and subject to any prescribed conditions, the Ruler or a subject of any other Indian State

4 No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent court

5 No person shall be included in the electoral roll for a Sikh constituency, a Muhammadan constituency, an Anglo-Indian constituency, or an Indian Christian constituency unless he is a Sikh, a Muhammadan, an Anglo-Indian, or an Indian Christian, as the case may be

6 No person who is or is entitled to be included in the electoral roll for any Sikh constituency, Muhammadan constituency, Anglo Indian constituency, or Indian Christian constituency in any Province shall be included in the electoral roll for a general constituency in that Province

Provided that this paragraph shall not apply in relation to the general seats reserved for women in Assam and Orissa or the constituencies for the election of persons to fill those seats

7 No person shall in any Province vote at a general election in more than one territorial constituency, and in each Province such provisions, if any, as may be prescribed in relation to that Province shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency in the Province

\* Provided that, in any Province in which territorial constituencies have been specially formed for the purpose of electing women members, nothing in this paragraph or in any such provisions shall prevent a person from being included in the electoral roll for, and voting at a general election in, one territorial constituency so formed and also one territorial constituency not so formed

If a person votes in more than one constituency in contravention of this paragraph, his votes in each of the constituencies shall be void

8 No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency if he is for the time being disqualified from voting under the provisions of any such Order in Council, Act of the Provincial Legislature or rules made by the Governor as may be made or passed under this Act with respect to corrupt practices and other offences in connection with elections, and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included

9 No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude, or imprisonment

10 The following provisions shall have effect with respect to the enfranchisement of women in respect of the qualifications of their husbands—

- (a) a woman who, at the date of the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall, notwithstanding anything in the subsequent provisions of this Schedule, continue to be on the roll for that constituency unless she remarries or becomes disqualified under the foregoing provisions of this Schedule for inclusion in that roll;

- (b) not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications of any particular man and any question which of several women is to be selected for inclusion shall be determined in the prescribed manner

Provided that, if a woman who is entitled by virtue of sub-paragraph (a) of this paragraph to remain on the roll of a territorial constituency changes her place of residence, then, if she so desires, she may, on any subsequent revision of the roll, be transferred to the roll of such other territorial constituency as may be appropriate

11 For the purposes of this Schedule any property owned, held, or occupied or payment made by, or assessment made on, a person as a trustee, guardian, administrator or receiver or in any other fiduciary capacity, shall, except as otherwise expressly provided in this Schedule, be left out of account

12 This schedule shall have effect as if any reference therein to a member of His Majesty's naval, military or air forces included a reference to a member of any police force belonging to any Governor's Province or Chief Commissioner's Province the Royal Indian Naval Reserve, R I N Volunteer Reserve, the Auxiliary Force (India), the Indian Territorial Force or the R I A F Volunteer Reserve, not being a member who has been dismissed or discharged for disciplinary reasons

. Provided that this paragraph shall not have effect in relation to any person by reason of his membership of the R I N Reserve, the R I N Volunteer Reserve, the Auxiliary Force (India), the Indian Territorial Force or the R I A F Volunteer Reserve unless the period of his service either was of not less than four years or included actual service in the Royal Indian Navy or the Royal Indian Air Force or service in a part of the Auxiliary Force (India) or the Indian Territorial Force for the time being embodied in pursuance of a notification issued by the Governor-General in Council and published in the Gazette of India

13 — (1) In this Schedule, except where the context otherwise requires—

"territorial constituency" means one of the territorial constituencies mentioned in paragraphs five and eight of the Fifth Schedule to this Act,

"Anglo-Indian," "Indian Christian" and "scheduled castes" have the same meanings respectively as they have in the Fifth Schedule to this Act,

"Indian Christian constituency" does not include any constituency which may be formed for choosing persons to fill the Indian Christian seat in Bihar,

"person" does not include a body of persons, prescribed," except in the phrase "the prescribed date," has the same meaning as in the Fifth Schedule to this Act,

"previous financial year," "previous Bengali year" and "previous Fasli year" mean, respectively, the financial year, the Bengali year, and the Fasli year immediately preceding that in which the prescribed date falls,

"house" and "building" include, respectively, a part of a house or building separately occupied as a dwelling or for the purposes of any trade, business, or profession,

"literate" means, in relation to any person, able to read and write in some language or dialect selected by him, being a language or dialect in common use in some part of India,

"cantonment" means a cantonment for the purposes of the cantonments Act, 1924, and "cantonment record" means a record prepared under that Act

(2) Any reference in this Schedule to "urban constituencies" or "rural constituencies" shall be construed as a reference to such territorial constituencies as may be classified as urban or rural constituencies, respectively by the Government of India (Provincial Legislative Assemblies) Order, 1936, or an Act of the Provincial Legislature

Provided that any such order in Council or Act may direct that any Anglo-Indian constituency or Indian Christian constituency shall be deemed to be an urban constituency for some purposes and a rural constituency for other purposes

(3) Any reference in this Schedule to persons assessed to income tax in any financial year shall be deemed to include a reference to any partner in a firm

assessed to income tax in that year if his share of the firm's income on which income tax was so assessed is certified in the prescribed manner to have been not less than the minimum on which the tax is leviable

(4) If any question arises under this Schedule whether any person is or is not a Sikh, he shall be deemed to be a Sikh if and only if he makes in the prescribed manner a declaration in the prescribed form that he is a Sikh

(5) Any reference in this Schedule to a retired, pensioned or discharged member, or to a retired, pensioned or discharged officer, non-commissioned officer or soldier of any force shall be deemed not to include a reference to any person who has been dismissed or discharged from that force for disciplinary reasons

(6) Any reference in this Schedule to all or any or the provisions of any Indian Act shall be construed as a reference to those provisions as amended by or under any other Act or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted

## PART II

### MADRAS

#### *General requirement as to residence*

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has resided in a house in the constituency for a period of not less than one hundred and twenty days in the previous financial year

A person is deemed to reside in a house if he sometimes uses it as a sleeping place and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning

#### *Qualifications dependent on taxation*

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year, he—

- (a) paid tax under the Madras Motor Vehicles Taxation Act, 1931, for the whole of that year, or

- (b) paid for both the half years of that year to a municipality, local board or cantonment authority in the Province profession tax under the Madras City Municipal Act, 1919, the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Cantonments Act, 1924, or
- (c) paid for both the half years of that year to a municipality or cantonment authority in the Province property tax under any of the said Acts, or
- (d) paid for the half years of that year house tax under the Madras Local Boards Act, 1920, or
- (e) occupied as sole tenant throughout that year a house in respect of which property tax or house tax has been paid for both the half years of that year under any of the Acts mentioned in this paragraph, or
- (f) was assessed to income tax

*Qualifications dependent on property, &c*

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) was on the last day of the previous fasli year a registered landholder, inamdar, ryotwari pattadar or occupancy ryot under the Madras Estates Land Act, 1908, or
- (b) was in and for the previous fasli year assessed to ground rent payable to the Government of the Province, or
- (c) was throughout the previous fasli year a kanamdar or kuzhikanamdar or the holder of a kudiyiruppu or a verumpattamdar having fixity of tenure, each of these terms having the meaning assigned to it in the Malabar Tenancy Act, 1929, or
- (d) was throughout the previous fasli year a mortgagee with possession or lessee, under a registered instrument, of immovable property in the Province (other than house property) of an annual rent value, in the case of an urban constituency, of not less than one hundred rupees, and, in the case of a rural consti-



tuency of not less than fifty rupees

4 —(1) Sub paragraph (a) of the last preceding paragraph shall not apply in relation to registered joint landholders, registered joint inamdars registered joint ryotwari pattadars or registered joint occupancy ryots, but in relation to such persons (being persons so registered on the last day of the previous fasli year) the following provisions of this paragraph shall have effect

(2) Where the joint holding of any joint landholders or joint holders of a whole-inam village is of an annual rental of one thousand rupees or upwards then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one registered joint holder for every complete five hundred rupees of the annual rental of the joint holding shall be qualified to be included in the electoral roll of the appropriate territorial constituency

(3) Where the annual assessment, rent or kist of the joint holding of joint holders of a minor inam, a ryotwari patta or an estate patta is one hundred rupees or upwards, then, subject as aforesaid, one registered joint holder for every complete fifty rupees of the annual assessment, rent or kist shall be qualified to be included in the electoral roll of the appropriate territorial constituency.

(4) In other cases, one of the registered joint holders shall, subject as aforesaid, be qualified to be included in the electoral roll of the appropriate territorial constituency

(5) The registered holders to be included under this paragraph in an electoral roll in respect of a joint holding shall be those nominated in an application in that behalf, signed by a majority of the registered joint holders

#### *Qualification by reason of guardianship*

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is on the prescribed date the guardian of a minor who by virtue of the foregoing provisions of this Part of this Schedule would have been entitled to be included in the electoral roll for that constituency if he were of full age and satisfied the requirements of paragraph one of this Part of this Schedule

*Qualification by reason of literacy*

6 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to be literate

*Qualification by reason of service in His Majesty's Forces*

7 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged member His Majesty's Naval, Military or Air forces

*Additional qualifications for women*

8 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

(a) if she is the pensioned widow or the pensioned mother of a person who was a member of His Majesty's Naval, Military or Air forces, or

(b) if her husband possesses the qualifications requisite for the purpose of this paragraph

9 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

(a) was assessed in the previous financial year to income tax, or

(b) is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air forces, or

(c) occupied for not less than six months in the previous financial year a house in the City of Madras the annual rent value whereof was not less than sixty rupees, not being a house in any military or police lines, or

(d) was assessed in the Province in the previous financial year to tax on companies, or

(e) was assessed in the province in the previous financial year to an aggregate amount of not less than three rupees, in respect of either or both of the following taxes, namely, property tax or profession tax, or

(f) was on the last day of the previous financial year

registered as a ryotwari pattadar or an inamdar of land the annual rent value whereof is not less than ten rupees, or

- (g) held throughout the previous fasli year a ryotwari pattadar or an inamdar a registered lease of land the annual rent value whereof is not less than ten rupees, or
- (h) was on the last day of the previous fasli year registered jointly with the proprietor under section fourteen of the Malabar Land Registration Act, 1895, as the occupant of land the annual rent value whereof is not less than ten rupees, or
- (i) was on the last day of the previous fasli year a registered landholder holding an estate the annual rent value whereof is not less than ten rupees, or
- (j) held on the last day of the previous fasli year as ryot, or as tenant under a landholder, land the annual rent value whereof is not less than ten rupees

*Special qualification for Scheduled Castes*

9 A Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person who is a member of the scheduled castes shall be qualified to be included in the electoral roll for any territorial constituency if throughout the previous fasli year he occupied as owner or lessee a house in the municipality, a cantonment or an area subject to the jurisdiction of a local board with an annual rent value of not less than eighteen rupees, or a house elsewhere with an annual rent value of not less than twelve rupees

*Application necessary for enrolment in certain cases*

10 No person shall, by virtue of sub-paragraph (e) of paragraph two, sub-paragraph (c) or sub-paragraph (d) of paragraph three, paragraph five, or paragraph six, of this Part of this Schedule, or by virtue of her husband being a retired, pensioned or discharged member of His Majesty's Naval, Military or Air forces be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by, or, if it is so prescribed, on behalf of that person, that person be so included,

*General provisions as to joint property, &c*

11—(1) Subject to the provisions of this paragraph, property held and payments made jointly by, and assessments made jointly on, more than one person, shall be left out of account for the purposes of this Part of this Schedule

(2) Where any such property, payments or assessments would qualify a person if they had been held or made by, or made on, him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one of those person shall be qualified in respect of the property, payment or assessment and that person shall be—

- (a) if the property is held, or the payments or assessments made, by or on a Hindu joint family, the manager thereof,
- (b) if the property is held or the payments or assessments made by or on any other joint family, the member thereof authorised in that behalf by the family themselves,
- (c) in any other case, the person authorised in that behalf by a majority of the persons by or on whom the property is held or the payments or assessments made

(3) Nothing in this paragraph affects paragraph four of this Part of this Schedule, or the provisions of Part I of this Schedule relating to partners in firms assessed to

income tax

*Interpretation, &c*

12—(1) In this Schedule, in relation to Madras—

“estate” means an estate as defined in the Madras Estates Land Act, 1908,

“fashi year” means a year ending on the thirtieth day of June,

“landholder” means a person owning an estate or part of an estate and includes every person entitled to collect the rent of the whole or part of an estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court, or of any provision of law,

“rent value” means the value as determined in

accordance with the provisions of section seventy-nine of the Madras Local Boards Act, 1920, with reference to the accounts of the previous fasli year or, in any case in which it is not possible so to determine the rent value, such value as appears to the registration officer to be the rent value,

"tenant" includes all persons who, whether personally or by an agent, occupy a house or land under the owner or landholder or intermediate landholder, whether or not rent is paid to the owner, landholder or intermediate landholder, as the case may be, except that it does not include any person occupying a house in military or police lines rent free by virtue of any office, service or employment

(2) A person who is paying or is liable to pay the rent of a house shall be deemed to occupy it

(3) References in this Part of this Schedule to, or to, the taxes payable in respect of, land or houses, relate exclusively to land or houses in the Province

### PART III

#### BOMBAY

##### *General requirement as to residence*

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he satisfies the requirement as to residence in relation to that constituency

For the purposes of this Part of this Schedule a person shall be deemed to satisfy the requirement as to residence—

- (a) in relation to a Bombay city constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the city of Bombay or in the Thana mahal or the South Salsette taluka,
- (b) in relation to any other urban constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency or within two miles of the boundary thereof.

- (c) in the case of a rural constituency, if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the constituency, or in a contiguous constituency of the same communal description

Provided that a person shall be deemed to satisfy the requirement as to residence in relation to an Anglo Indian territorial constituency if he has for a period of not less than one hundred and eighty days in the previous financial year resided in a house in the Province

A person is deemed to reside in a house if he sometimes uses it as a sleeping place, and a person is not deemed to cease to reside in a house merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the house at any time and has not abandoned his intention of returning

*Qualifications dependent on taxation*

2 Subject to the provisions of Part I of the Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency, if he was assessed during the previous financial year to income tax

*Qualifications dependent on Property,*

3 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) holds in his own right, or occupies as a tenant alienated or unalienated land or land of talukdari tenure, being land in the constituency assessed at, or of the assessable value of, not less than eight rupees land revenue, or
- (b) is the alienee of the right of the Government to the payment of rent or land revenue amounting to not less than eight rupees in respect of alienated land in the constituency, or
- (c) is a khot or sharer in a khoti village in the constituency, or a sharer in a huggar or narwadari village in the constituency, or

responsible for the payment of not less than eight rupees land revenue, or

- (d) occupies in the constituency as owner or tenant a house or building, situate in the city of Bombay or in any municipal borough, municipal district, cantonment or notified area, and having at least the appropriate value

In sub-paragraph (d) of this paragraph, the expression 'the appropriate value' means—

- (i) in relation to a house or building situate within the city of Bombay, an annual rental value of sixty rupees,
- (ii) in relation to a house or building situate outside the city of Bombay but in an area in which a tax is based on the annual rental value of houses or buildings, an annual rental value of eighteen rupees,
- (iii) in relation to any other house or building, a capital value of seven hundred and fifty rupees

*Educational qualification*

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation or school leaving examination of the University of Bombay, or an examination prescribed as at least equivalent to either of those examinations, or, if it is so prescribed, any other prescribed examination, not lower than a vernacular final examination

*Qualification by reason of service in His Majesty's Forces*

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air forces

*Additional qualification for women*

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or the pensioned mother of a person who was a member of His Majesty's Naval, Military or Air Forces, or
- (b) if she is shown in the prescribed manner to be literate, or

- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph
- 7 A husband shall not be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph unless he satisfies the requirement as to residence in relation to the constituency in question, but subject as aforesaid a husband shall be deemed to possess the said qualifications if—
- (a) in the previous financial year, he was assessed to income tax, or
  - (b) he is a retired pensioned or discharged member of His Majesty's Naval, Military or Air Forces or
  - (c) in the constituency he holds in his own right, or occupies as tenant, alienated or unalienated land or land on talukdari tenure assessed at, or of the assessable value of, not less than sixteen rupees land revenue in the Panch Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district, or not less than thirty-two rupees land revenue elsewhere, or
  - (d) he is the alienee of the right of the Government to the payment of rent or land revenue in respect of alienated land in the constituency amounting to not less than sixteen rupees in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district and to not less than thirty-two rupees elsewhere, or
  - (e) he is a khot or sharer in a khoti village in the constituency or a sharer in a bhagdari or narwadari village in the constituency and, in either case, is responsible for the payment, in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or in the Ratnagiri district, of not less than sixteen rupees land revenue, and, elsewhere, of not less than thirty-two rupees land revenue or
  - (f) he occupies as owner or tenant in the constituency a house or building situate in the city of Bombay or in a municipal borough, municipal district, cantonment or notified area and having at least the appropriate value

In sub-paragraph (f) of this paragraph the expression "appropriate value" means—

- (i) in relation to a house or building in the city of



Bombay, an annual rental value of one hundred and twenty rupees ,

- (ii) in relation to a house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, situate in an area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of twenty-four rupees ,
- (iii) in relation to any other house or building in the Panch-Mahals sub-division of the Broach and Panch-Mahals district or the Ratnagiri district, a capital value of one thousand rupees ,
- (iv) in relation to a house or building in any other area in which any tax is based on the annual rental value of houses or buildings, an annual rental value of thirty-six rupees , and
- (v) in relation to any other house or building, a capital value of one thousand five hundred rupees  
*per person qualified for scheduled castes*

8 Subject as aforesaid a person who is a member of the scheduled caste shall also be qualified to be included in the electoral roll for any territorial constituency if either—

- (a) he is shown in the prescribed manner to be literate , or
- (b) he was at any time during the year ending on the thirty first day of December next preceding the prescribed date a person actually performing in the Province the duties of an inferior village office, whether hereditary or not

Provided that a person who has been dismissed for misconduct and has not been re-employed shall not by virtue of sub paragraph (i) of this paragraph be qualified to be entered in any electoral roll

*Application necessary for enrolment in certain cases*

9 No person shall by virtue of paragraph four or of paragraph six of this Part of this Schedule be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it so prescribed, on his behalf, that he should be so included

Provided that in relation to the original preparation and revisions thereof within

three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub-paragraph (b) of paragraph seven of this Part of this Schedule.

*Provisions as to joint property, &c.*

10—(1) Subject to the provisions of this paragraph, any reference in this Part of this Schedule to land or other immovable property, or to rent or land revenue in respect of alienated land, shall, in relation to any persons who are co sharers in such land, property, rent or land revenue, be construed as a reference to the respective shares of those persons

(2) Where two or more persons occupy any house, the rental value of the house shall in relation to each of those persons, be deemed to be the rental value thereof divided by the number of those persons

(3) Where property is owned, held or occupied, or payments are made, jointly by, or assessments are made jointly on, the members of a joint family, and the property, payments or assessments would qualify a person if they had been owned, held occupied or made by or on him solely, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one member of the family shall be qualified in respect of the property, payment or assessment, and that person shall be, in the case of a Hindu joint family, the manager thereof and, in other cases, the member authorised in that behalf by the family themselves

Save as aforesaid, any property owned, held or occupied or payments made, jointly by or assessment made jointly on, the members of a joint family shall be left out of account for the purposes of this Part of this Schedule

(4) Nothing in this paragraph affects the provisions of Part I of this Schedule relating to partners in firms assessed to income tax

*Interpretation, &c*

11—(1) In the Schedule, in relation to Bombay—

"holder" means a person lawfully in possession of land, whether his possession is actual or not, and "hold" shall be construed accordingly,

"tenant" means a lessee whether holding under an instrument or under an oral agreement, and includes a mortgagee of a tenant's rights with possession and, in relation to a house not situate in military or police lines, also includes any person occupying the house rent-free by virtue of any office, service or employment,

"Bombay city constituency" means a constituency comprising any part of the city of Bombay

(2) The value of any machinery, furniture or equipment contained in or situate upon any house or building shall not be included in estimating for the purposes of this Part of this Schedule the rental value or the capital value of the house or building

(3) In computing for the purposes of this Part of this Schedule the assessable value of any land, regard shall be had to the average rate of assessment on assessed land in the same village, or, if there is no such land in the same village, the average rate of assessment on assessed land in the nearest village containing assessed land

#### PART IV

#### WEST BENGAL

##### *General requirement as to residence*

1—(1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency

Provided that—

(a) in the case of a Calcutta constituency, the provisions of this paragraph shall be deemed to be complied with in relation to any person if he has a place of residence in Calcutta and a place of business within the constituency

(b) (Omitted)

(2) In this paragraph "a place of residence" means a place where a person ordinarily and actually resides during the greater part of the year

##### *Qualifications dependent on taxation*

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) has paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year, or
- (b) was assessed during the previous year to income tax, or
- (c) was during the previous year entered in the municipal assessment book or licence register, or any other authorised register maintained by the corporation of Calcutta, as having paid in respect of that year either directly or indirectly any sum as consolidated rate, tax or licence fee to the corporation, or
- (d) has paid during and in respect of the previous year municipal or cantonment taxes or fees of not less than eight annas or road and public works cesses under the Cess Act, 1880, of not less than eight annas, or Chaukidari tax under the Village Chaukidari Act, 1870, of not less than six annas, or union rate under the Bengal village Self-Government Act, 1919, of not less than six annas

*Qualifications dependent on property*

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of any territorial constituency if at any time during the previous financial or Bengali year he has occupied by virtue of his employment a house in the Province the annual valuation of which is not less than forty-two rupees

In this paragraph "annual valuation" means the annual rental of the house as ascertained from any accounts of the employer of the person in question which are required by or under any law to be regularly audited or, if the annual valuation is not so ascertainable, one-tenth of the annual remuneration received by the person in question for the employment by virtue of which he occupies it

*Educational Qualification*

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the matriculation examination of any prescribed university, or an examination prescribed as at least

equivalent to any such examination, or if it so prescribed, any other prescribed examination, not lower than a final middle school examination

*Qualification by reason of Service in his Majesty's forces*

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged member of his Majesty, Naval, Military or Air Forces

*Additional qualifications for women*

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the pensioned mother of a person who was a member of His Majesty's Naval, Military, or Air Forces or if her husband possesses the qualifications requisite for the purposes of this paragraph or if she is shown in the prescribed manner to be literate

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom

7 In relation to a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) he was during the previous year entered in the municipal assessment book as the owner and occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than one hundred and fifty rupees per annum, or as the owner or occupier of any land or building in Calcutta separately numbered and valued for assessment purposes at not less than three hundred rupees per annum and paid during that year his share of the consolidated rate on the land or building, or
- (b) he has paid during and in respect of the previous year on his sole account and in his own name not less than twenty four rupees either in respect of the taxes levied under Chapter XI, or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923, or

- (c) his name is entered in the municipal assessment book in respect of any land or building in Calcutta in respect of which not less than twenty-four rupees was paid in the previous year in respect of the consolidated rate

8 In relation to an urban constituency which is not a Calcutta constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year, he paid, in the municipality of Howrah, municipal taxes or fees of not less than three rupees, or, in any other municipal area or cantonment in the Province, municipal or cantonment taxes or fees of not less than one rupee, eight annas

9 In relation to a rural constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if, during and in respect of the previous year he paid not less than one rupee, eight annas in respect of municipal taxes or fees, or not less than one rupee in respect of road and public works cesses under the Cess Act, 1880, or not less than two rupees in respect of Chaukidari tax under the Village Chaukidari Act, 1870, or in respect of union rate under the Bengal Village Self-Government Act, 1919

10 In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the said purposes if he either is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces or was assessed in the previous year to income tax, or paid before the expiration of the previous year any sum as tax under the Bengal Motor Vehicles Tax Act, 1932, in respect of that year

*Special provisions as to Darjeeling general constituency*

11. Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any rural general constituency comprising any part of the Sadar, Kalimpong and Kurseong sub-divisions of the Darjeeling district if that person either—

- (a) has paid during and in respect of the previous year rent of not less than twenty rupees for any land in the Province situate in a municipal area or for any hired building in the Province or rent of not less than two rupees for any land in the Province not situate in a municipal area, or

- (b) is the wife of a person who, during and in respect of the previous year, has paid rent of not less than sixty rupees for any land in the Province situate in a municipal area or for any hired building in the Province, or rent of not less than six rupees for any land in the Province not situate in a municipal area

*Application necessary for enrolment in certain cases*

12 No person shall by virtue of paragraph three or paragraph four of this Part of this Schedule be included in the electoral roll of any territorial constituency, unless application is made in the prescribed manner by him, or, if it is so prescribed, on his behalf, that he should be so included

*Special provisions as to Muhammadan women's constituency*

13 No man shall be included in the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of persons to fill the seats reserved for women

*Interpretation, &c*

14 —(1) In this Schedule, in relation to West Bengal—

"Calcutta" means Calcutta as defined in paragraph 11 of section three of the Calcutta Municipal Act, 1923,

"a Calcutta constituency" means, subject to the provisions of this paragraph with respect to Anglo-Indian constituencies, or Indian Christian constituencies, a constituency which comprises any part of Calcutta,

"previous year" means the previous financial year or the previous Bengali year, whichever is appropriate in the particular case,

"Bengali year" means a year ending on the last day of the Bengali month of Chaitra

(2) Notwithstanding anything in this paragraph, an Order in Council delimiting territorial constituencies may provide that any Anglo-Indian constituency, or Indian Christian constituency comprising any part of Calcutta, shall, for all or any of the purposes of this Part of this Schedule, be deemed not to be a Calcutta constituency

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, the mem-

bers of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves.

Provided that this paragraph shall not apply where members of a joint family have separate accommodation and separate messing, and in any such case any reference in this Part of this Schedule to any property, payment or assessment shall be construed as a reference to each member's share of that property, payment or assessment.

#### PART V

#### The United Province

##### *General requirement as to residence*

1—(1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he is resident in the constituency.

(2) For the purposes of this Part of this Schedule a person shall be deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling house therein ready for occupation in which he occasionally dwells.

##### *Qualifications dependent on taxation*

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral for any territorial constituency if he—

- (a) was assessed during the previous financial year to income tax, or,
- (b) was, in an area wholly or partly within the constituency in which a municipal tax is in force, assessed in the previous financial year to municipal tax on an income of not less than one hundred and fifty rupees per annum.

##### *Qualifications dependent on property.*

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is the owner or tenant of a house or building in the constituency the rental value whereof is not less than twenty-four rupees per annum or, in the case of a member of the Schedule castes, if he



is the owner or tenant of a house or a building in the constituency the rental value whereof is not less than twelve rupees per annum.

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he—

- (a) owns land in the constituency on which land revenue of not less than five rupees per annum is payable, or
- (b) owns land in the constituency free of land revenue, if the land revenue nominally assessed on the land for determining the amount of rates payable in respect of the land, either alone or together with any land revenue payable by him as owner of other land in the constituency, amounts to not less than five rupees per annum, or
- (c) is a tenant of land in the constituency in respect of which rent of not less than ten rupees per annum, or rent in kind equivalent to not less than ten rupees per annum, is payable, or
- (d) is an under-proprietor in Oudh of land in the constituency in respect of which under-proprietary rent of not less than five rupees per annum is payable, or
- (e) in the case of a constituency comprising any part of the Hill Patts of Kumaun, is resident in those Hill Patts and, in the constituency, either is owner of a fee simple estate in those Hill Patts or is assessed to the payment of land revenue or cesses of any amount in those Hill Patts, or is a Khaikar

*Educational qualification,*

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the upper primary examination, or an examination which is prescribed as the equivalent thereof

*Qualification by reason of service in His Majesty's forces.*

6 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any terri-

territorial constituency if he is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air forces

*Special provision as to Shilpkars in the Hill Patts of Kumaun*

7 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency comprising any part of the Hill Patts of Kumaun if he is a Shilpkar resident in a village in those Hill Patts and is in the prescribed manner selected and designated as their representative by the Shilpkar families of that village

*Additional qualifications for women*

8 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) if she is the pensioned widow or the pensioned mother of a person who was a member of His Majesty's Naval, Military or Air Forces, or
- (b) if she is proved in the prescribed manner to be literate, or
- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph

9 In relation to any territorial constituency, a husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) he is the owner or tenant of a house or building in the constituency, the rental value whereof is not less than thirty-six rupees per annum, or
- (b) was in an area in which no house or building tax is in force, assessed in the previous year in the constituency to municipal tax on an income of not less than two hundred rupees per annum, or
- (c) owns land in the constituency in respect of which land revenue amounting to not less than twenty-five rupees per annum is payable,  
or
- (d) owns land in the constituency free of land revenue, if the land revenue nominally ascertained

- on the land for determining the amount of rates payable in respect thereof, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than twenty-five rupees per annum, or
- (e) is resident in the Hill Pattis of Kumaun and, in the constituency, either owns a fee simple estate situate in those Hill Pattis or is assessed to the payment of land revenue or cesses of any amount in those Hill Pattis, or is a Khaikar, or
  - (f) is in the constituency, a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1926 or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, and is liable as such for rent of not less than twenty-five rupees per annum, or
  - (g) holds in the constituency as a tenant, land in respect of which a rent of not less than fifty rupees per annum or a rent in kind equivalent to not less than fifty rupees per annum is payable, or
  - (h) was assessed in the previous financial year to income tax, or
  - (i) is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces

*Application necessary for enrolment in certain cases*

10—(1) No person shall by virtue of paragraph five or sub-paragraph (a) or sub paragraph (b) of paragraph eight of this Part of this Schedule, or by virtue of her husband being a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by, or if it is so prescribed, on behalf of, that person, that that person should be so included

(2) On the preparation of the original electoral roll for any rural constituency or on any revision of the electoral roll for a rural constituency within three years from the commencement of Part III of this Act, no person shall by virtue of her husband possessing any of the other qualifications requisite for the purposes of the said para-

graph might be included in the electoral roll unless application is made in the prescribed manner by her, or if it is so prescribed, on, her behalf, that she should be so included

*Interpretation, &c*

11—(1) In this Schedule, in relation to the United Provinces—

“owner” does not include a mortgagee or a lessee and “own” shall be construed accordingly,

“tenant” as respects any land in a rural area means a tenant as defined in the Agra Tenancy Act, 1926, or the Oudh Rent Act, 1886, as the case may be, and does not include a sub-tenant, and as respects any house or building means a person who occupies it on payment of rent, or in the case of a house not situate in military or police lines, a person who occupies it rent free by virtue of any office, service or employment,

“under proprietor” means an under-proprietor as defined in the Oudh Rent Act, 1886,

“Khaikar” means a person recorded as such in the records of rights of land in the Hill Patts of Kumaun,

“building” means a building as defined in the United Provinces Municipalities Act, 1916,

“rental value” means the value of a house or building based on the amount of annual rent,

“Municipal tax” and “house or building tax,” means the taxes respectively known by those names imposed under the United Provinces Municipalities Act, 1916, the United Provinces Town Areas Act, 1914, and the Cantonments Act, 1924,

“urban area” means a municipality or notified area as defined in subsection (9) of section two, and subsection (2) of section three hundred and thirty-seven of the United Provinces Municipalities Act, 1916, or a town area as defined in the United Provinces Town Areas Act 1914, or a cantonment,

“rural area” means an area which is not an urban area

(2) Where property is held or payments are made jointly by or assessments are made jointly on the members of a joint family or joint tenancy, the family or tenancy shall be adopted as the unit for deciding whether under this Part of this Schedule the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a joint Hindu family, the manager thereof or if there is no manager, the member nominated in that behalf by the majority of the family, and in other cases the member nominated in that behalf by the family or tenancy concerned.

#### PART VI

#### EAST PUNJAB

##### *General requirements as to residence*

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency.

For the purposes of this Part of this Schedule proof that a person owns a family dwelling house or a share in a family dwelling house in a constituency and that that house has not during the twelve months preceding the prescribed date been let on rent either in whole or in part shall be sufficient evidence that that person is resident in the constituency.

##### *Qualifications dependent on taxation*

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if during the previous financial year either—

- (a) he was assessed to income tax, or was in the Province assessed in respect of any direct municipal or direct cantonment tax to an amount of not less than fifty rupees, or
- (b) he was in the Province assessed to *hustiyat* or profession tax to an amount of not less than two rupees or, in districts in which no such tax exists, to any other direct tax imposed under the Punjab District Boards Act to an amount of not less than two rupees.

##### *Qualifications dependent on property, &c*

As so said, a person shall also be quali-

fixed to be included in the electoral roll for any territorial constituency if he either-

- (a) is the owner of land in the Province assessed to land revenue of not less than five rupees per annum, or
- (b) is a tenant with a right of occupancy as defined in Chapter III of the Punjab Tenancy Act, 1887, in respect of land in the Province assessed to land revenue of not less than five rupees per annum, or
- (c) is an assignee of land revenue in the Province amounting to not less than ten rupees per annum, or
- (d) is a tenant of not less than six acres of irrigated land in the constituency, or of not less than twelve acres of unirrigated land in the constituency, or
- (e) has throughout the twelve months immediately preceding the prescribed date owned immovable property in the Province of the value of not less than two thousand rupees or of an annual rental value of not less than sixty rupees, not being land assessed to land revenue, or
- (f) has throughout the twelve months preceding the prescribed date occupied as tenant in the constituency immovable property of an annual rental value of not less than sixty rupees, not being land assessed to land revenue, or
- (g) is a *zaildar*, *inamdar*, *sutedposh* or *lambardar* in the constituency

Provided that the provisions of sub-paragraph (d) of this paragraph shall be deemed to be complied with in the case of a person who is the tenant of both irrigated and unirrigated land in the constituency if the sum of the area of that irrigated land and half the area of that unirrigated is not less than six acres

#### *Educational Qualification*

4 Subject as aforesaid a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have attained the primary or an equivalent or higher educational standard

*Qualification by reason of service in His Majesty's forces*

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces

*Additional qualification for women*

6 Subject as aforesaid a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or the pensioned mother of a person who was a member of His Majesty's Naval, Military or Air Forces or if she is shown in the prescribed manner to be literate or if her husband possesses the qualifications requisite for the purposes of this paragraph

7 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

- (a) during the previous financial year was assessed to income tax, or was assessed in the Province in respect of any direct municipal or cantonment tax to an amount of not less than fifty rupees, or
- (b) is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces
- (c) has throughout the twelve months preceding the prescribed date owned immovable property in the province of the value of not less than four thousand rupees or of an annual rental value of not less than ninety six rupees, not being land assessed to land revenue, or
- (d) has throughout the twelve months preceding the prescribed date occupied as a tenant immovable property in the constituency of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue, or
- (e) is the owner of land in the Province assessed to land revenue of not less than twenty-five rupees per annum, or
- (f) is the assignee of land revenue in the Province amounting to not less than fifty rupees per annum, or
- (g) is a tenant or lessee under the terms of a lease

for a period of not less than three years of Crown land in the constituency for which an annual rent of not less than twenty-five rupees is payable, or

- (h) is a tenant with a right of occupancy as defined in Chapter II of the Punjab Tenancy Act, 1887, in respect of land assessed to land revenue of not less than twenty-five rupees per annum

Provided that for the purposes of sub paragraph (g) of this paragraph, where the amount payable by any tenant or lessee is assessed from harvest to harvest, the annual rent payable by him shall be deemed to be the annual average of the amounts payable by him in the three years preceding that in which the prescribed date falls

*Special qualification for scheduled castes*

8 Subject as aforesaid a person who is a member of the scheduled castes shall also be qualified to be included in the electoral roll for any territorial constituency if he either—

- (a) is shown in the prescribed manner to be literate, or
- (b) has throughout the twelve months preceding the prescribed date owned immovable property in the Province of a value of not less than fifty rupees, not being land assessed to land revenue, or has throughout that period owned malba of a house in the Province of not less than that value, or
- (c) has, throughout the twelve months preceding the prescribed date, occupied as tenant immovable property in the constituency of an annual rental value of not less than thirty-six rupees

*Application necessary for enrolment in certain cases*

9 No person shall, by virtue of paragraph four, paragraph six or sub paragraph (a) of paragraph eight of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made by him in the prescribed manner that he should be so included

*Interpretation; etc*

10—(1) In this Schedule, in relation to East Punjab—  
“annual rental value” in relation to immovable proper-



ty means the amount for which the property together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to let, from year to year ,

"land revenue" means land revenue as defined in sub-section (6) of section three of the Punjab Land Revenue Act, 1887, and, in the case of fluctuating land revenue or land revenue assessed on land subject to river action, the annual amount thereof shall be taken to be the average amount of land revenue paid during the three agricultural years preceding that in which the prescribed date falls ,

"land records " means attested records of rights or attested annual records of rights maintained under Chapter IV of the Punjab Land Revenue Act, 1887, and includes an order finally sanctioning a mutation duly passed under that Chapter ,

"agricultural year " means a year ending on the thirtieth day of September ,

"owner " does not include a mortgagee ,

"tenant " in relation to agricultural land means a tenant as defined in the Punjab Tenancy Act, 1887 and in relation to other property means a person who holds that property by lease and is, or, but for a special contract, would be, liable to pay rent therefore, and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue of any office, service or employment

"zaildar, " "inamdar, " sufedposh " and " lambar-dar " mean respectively persons appointed as such in accordance with rules for the time being in force under the Punjab Land Revenue Act, 1887, and, do not include a substitute appointed temporarily for any such person

(2) In computing for the purposes of this Part of this Schedule the period during which a person has owned any immovable property, any period during which it was owned by a person from whom he derives title by inheritance shall be taken into account

(3) Any reference to immovable property, not being land assessed to land revenue, includes a reference to any building situated on land assessed to land revenue

(4) Where property is held or payments are made by, or assessments are made on, the members of a Hindu joint family, and the respective shares of the members of the family are not specified in the land records or in any municipal or cantonment record or in a decree of a civil court, as the case may be, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and, if it does exist, the person qualified shall be the manager of the family

(5) Subject to the provisions of the last preceding subparagraph, any reference in this Schedule to land assessed to land revenue, to other immovable property, to a tenancy or lease of land assessed to land revenue or to assigned land revenue shall, in relation to any persons who are co-sharers in such land, property, tenancy or lease, or land revenue, be construed as a reference to the respective shares of those persons

Provided that the share of any person under the age of twenty-one years shall, if his father is alive and a co-sharer, be deemed to be added to the share of his father, and, if his father is dead and his eldest surviving brother is a co-sharer, be deemed to be added to the share of that brother

(6) Not more than one person shall be qualified in respect of the occupation of a building occupied in common by two or more persons and any question which of those persons is to be qualified shall be determined in the prescribed manner

## PART VII

### BIHAR

#### *General requirement as to residence*

1—(1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless he resides in the constituency

(2) A person shall be deemed to reside within a constituency if he ordinarily lives therein, or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling house ready for occupation which he occasionally occupies

*Qualifications dependent on taxation*

2. Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule a person shall be qualified to be included in the electoral roll for a territorial constituency if he was assessed during the previous financial year to income tax or was, in the previous financial year, assessed to an aggregate amount of not less than one rupee eight annas in respect of municipal tax or is assessed, otherwise than in the Santal Parganas to chaukidari tax of an annual amount of not less than nine annas or, in the case of a member of the Scheduled castes, of an annual amount of not less than six annas

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas

*Qualifications dependent on property*

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of any territorial constituency if he either—

(a) occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay an annual rent of not less than twenty-four rupees, or

(b) holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, for which he is liable to pay a rent of not less than six rupees per annum or a local cess of not less than three annas

Provided that in relation to land within the Santal Parganas this paragraph shall have effect as if there were substituted for the reference to six rupees, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, a reference to five rupees, and thereafter a reference to three rupees eight annas

*Educational qualification*

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial

constituency if he is proved, in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination

*Qualification by reason of service in His Majesty's forces*

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces

*Additional qualification for women*

6 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or pensioned mother of a person who was a member of His Majesty's Naval, Military or Air Forces, or if her husband possesses the qualifications requisite for the purposes of this paragraph, or if she is shown in the prescribed manner to be literate

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if the words "or if she is shown in the prescribed manner to be literate" were omitted therefrom

7 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if—

- (a) in the previous financial year he was assessed to income tax, or
- (b) he is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces or,
- (c) he was in the previous financial year assessed in the Province to an aggregate amount of not less than three rupees in respect of municipal tax, or
- (d) he is assessed in the Province, otherwise than in the Santal Parganas, to an annual sum of not less than two rupees eight annas in respect of chaukidari tax, or

- (e) he occupies land or buildings situate in the notified area of Jamshedpur in respect of which he is liable to pay rent of not less than one hundred and forty-four rupees per annum, or
- (f) he holds land in the Province, not situated in the notified area of Jamshedpur or an area in which municipal tax or chaukidari tax is levied, in respect of which he is liable to pay rent of not less than twenty-four rupees per annum or a local cess of not less than twelve annas

*Special provisions as to Muhammadan women's constituency.*

8 No man shall be included to the electoral roll for, or be entitled to vote at any election in, any Muhammadan constituency specially formed for the election of a person to fill the seat reserved for women

*Interpretation, &c.*

9 — (1) In this Schedule, in relation to Bihar—

"municipal tax" means a tax or rate levied in a municipality constituted under the Bihar and Orissa Municipal Act, 1922, in an area in respect of which a notification has issued under section three hundred and eighty-eight of that Act, or in a cantonment, or in the area administered by the Patna Administration Committee,

"chaukidari tax" means any tax levied under the Village Chaukidari Act, 1870, the Chota Nagpur Rural Police Act, 1914, or section thirty of the Bihar and Orissa Village Administration Act 1922

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists and, if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof and in other cases the member authorised in that behalf by the family themselves

(3) Where property is held or payments are made jointly by, or assessments are made jointly on, persons other than members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists, and if it does exist, then

subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, one and one only of those persons shall be qualified and the person to be qualified shall be selected in the prescribed manner

PART VIII

THE CENTRAL PROVINCES AND BERAR

*General requirements as to residence*

1—(1) No person shall be qualified to be included in the electoral roll for a territorial constituency unless, in the case of a rural constituency, he has a place of residence in the constituency, and, in the case of an urban constituency, he has a place of residence in or within two miles from the boundary of the constituency

(2) For the purposes of this Part of this Schedule a person shall be deemed to have a place of residence in an area if and only if he either—

- (a) has actually dwelt in a house within the area for not less than one hundred and eighty days in the aggregate during the previous financial year, or
- (b) he has maintained a house within the area for an aggregate period of not less than one hundred and eighty days during that year as a dwelling for himself in charge of his dependants or servants, and has visited that house during that year

*Qualifications dependent upon taxation*

2 Subject to the provisions of Part I of this Schedule and to any overriding provision of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for a territorial constituency if in the previous financial year he either—

- (a) was assessed to income tax, or
- (b) was, in an urban area in the Province in which a municipal tax based on *haisiyat* is imposed, assessed to such a tax on a *haisiyat* of not less than seventy-five rupees

*Qualifications dependent on property, &c*

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll of a territorial constituency if he either—

- (a) holds, in the Central Provinces, as a proprietor or thekadar, an estate or mahal the land revenue or kamil jama of which is not less than two rupees, or
- (b) holds, in the Central Provinces, as a proprietor or thekadar in proprietary right, sir land or khudkasht, or, as a malik makbuza, raiyat or tenant, agricultural land, being sir land, khudkasht or agricultural land, the assessed or assessable land revenue or the rent of which is not less than two rupees, or
- (c) holds, in Berar, in other than tenancy right, agricultural land of which the assessed or assessable land revenue is not less than two rupees, or
- (d) is, in an urban area in the Province, the owner or tenant of a building, the annual rental value of which is not less than six rupees, or
- (e) is a watandar patel or a watandar patwari holding office, or a registered deshmukh or deshpandia or a lambardar,

*Educational qualification*

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved, in the prescribed manner, to have passed an examination which qualifies for admission to a course of study for a degree of the Nagpur University, or an examination prescribed as at least equivalent thereto, or, if it is so prescribed, any other prescribed examination not lower than a final middle school examination :

Provided that in relation to a constituency in Berar, the foregoing provisions of this paragraph shall be deemed to be complied with in relation to any person if he is proved in the prescribed manner to have passed any examination in the State of Hyderabad prescribed as at least equivalent to an examination the passing of which qualifies persons under those provisions

*Qualification by reason of service in His Majesty's forces  
and the forces of His Exalted Highness the  
Nizām of Hyderabad*

5—(1) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces

(2) Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police

*Additional qualification for women*

6—(1) Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency—

- (a) If she is the pensioned widow or pensioned mother of a person who was a member of His Majesty's Naval, Military or Air Forces,
- (b) if she is proved in the prescribed manner to be literate or to be the holder of a primary school certificate, or
- (c) if her husband possesses the qualifications requisite for the purposes of this paragraph

(2) Subject as aforesaid a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency in Berar if she is the pensioned widow or pensioned mother of a person who was an officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or an officer or man of the Hyderabad State Police

7—(1) A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he either—

- (a) is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces, or
- (b) holds, in the Central Provinces, as a proprietor or thekadar an estate or mahal the land revenue or kamil jama of which is not less than thirty-five rupees, or
- (c) holds, in the Central Provinces, as a proprietor or thekadar in proprietary right, sir land or khudkasht, or as a malik makbuza, raiyat or tenant, agricultural land, being sir land, khudkasht or agricultural land, the assessed or assessable land revenue or part of which is not less than thirty-five rupees, or
- (d) holds, in Berar, in other than tenancy right, agricultural land of which the assessed or assessable



land revenue is not less than thirty-five rupees, or

(e) is, in an urban area, the owner or tenant of a building of which the annual rental value is not less than thirty six rupees, or

(f) was, in an urban area in which a municipal tax based on haisiyat is imposed, assessed in the previous financial year to such a tax on a haisiyat of not less than four hundred rupees

(2) In relation to any territorial constituency in Berar, a husband shall also be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he is a retired, pensioned or discharged officer, non-commissioned officer or soldier of the regular forces of His Exalted Highness the Nizam of Hyderabad, or a retired, pensioned or discharged officer or man of the Hyderabad State Police

*Additional qualification for members of scheduled castes.*

8 Subject as aforesaid, a member of a scheduled caste shall also be qualified to be included in the electoral roll for any territorial constituency if he is a kotwal, a jaglia, or a village mahar holding office

*Application necessary for enrolment in certain cases.*

9 No person shall, by virtue of paragraph four of this Part of this Schedule, or by virtue of being a pensioned widow or mother, or of being literate or the holder of a primary school certificate or of being the wife of a member of any force, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by him or, if it is so prescribed, on his behalf, that he should be so included

*Interpretation &c.*

10—(1) In this Schedule, in relation to the Central Provinces and Berar—

“building” means any structure or enclosure, whether used as a human dwelling or otherwise, and includes a part of a building,

“estate,” “mahal,” “malik makbuza” “kamil jama” “sir land” and “khudkasht” have the meanings respectively assigned to them in section two of the Central Provinces Land Revenue Act, 1917,

“estate or mahal” includes a part of an estate or mahal,

“Lambardar” means a lambardar appointed under the provisions of the Central Provinces Land Revenue Act, 1917,

- “land revenue” means land revenue as defined in section fifty-six of the Central Provinces Land Revenue Act, 1917, and in section forty-nine of the Berar Land Revenue Code, 1928,
- “Municipal Tax” means a tax imposed under the provisions of the Central Provinces Municipalities Act, 1922, or of that Act as applied to Berar ,
- “proprietor” includes an inferior proprietor and a plot proprietor, but does not include a transferee of proprietary rights in possession, or a mortgagee with possession,
- “raiyat” means the holder of a survey number as defined in subsection (18) of section two of the Central Provinces Land Revenue Act, 1917 and includes the holder of land recorded in the land records maintained by the Provincial Government as mirkiyat sarkar ,
- “registered deshmukh or deshpandia means a person, being a deshmukh or deshpandia, whose name is recorded in the registers of political pensions maintained by the Deputy Commissioners in Berar as the holder of a pension or share of a pension ,
- “rental value,” in relation to immovable property, means the amount for which the property, together with its appurtenances and furniture, if any, is actually let, or may reasonably be expected to be let, from year to year ,
- “tenant,” in relation to agricultural land, means a tenant as defined in subsection (11) of section two of the Central Provinces Tenancy Act, 1920, but does not include a sub-tenant and in relation to a house not situate in military or police lines includes any person occupying the house rent free by virtue any office, service or employment , includes a gaontia and a protected “thekadar” headman ,
- “hold” in relation to land or an estate or mahal, means to be recorded in the records maintained under Chapter V of the Central Provinces Land Revenue Act 1917, or Chapter X of the Berar Land Revenue Code, 1928, or, in the case of the Melghat Taluq of the Amraoti District, in the land records prescribed by the Provincial Govern-

ment, as the person in possession of the land, estate or mahal,

"urban area" means a municipality, notified area or cantonment, and includes the Government gun carriage factory estate at Jubbulpore and any prescribed railway settlements,

"watandar patel" and "watandar patwari" mean respectively a patel and a patwari appointed under section five of the Berar Patels and Patwaris Law, 1900

(2) For the purposes of this Part of this Schedule ante-alienation tenants as defined in section seventy-two of the Berar Land Revenue Code, 1928, and section forty of the Berar Alienated Villages Tenancy Law, 1921, permanent tenants as defined in section forty-seven of the Berar Alienated Villages Tenancy Law, 1921, and tenants of antiquity as defined in section seventy-three of the Berar Land Revenue Code, 1928, shall be deemed to hold agricultural land in other than tenancy right

(3) Subject to the provisions of the next succeeding subparagraph, the provisions of this Part of this Schedule shall have effect in relation to any persons who are co-sharers in, or in a tenancy or lease of land or other immovable property as if the respective shares of those persons in the land, property, tenancy or lease were held separately

(4) Where property is held or payments are made jointly by the members of a joint family or a tax is assessed jointly on the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist, the person qualified shall be, in the case of a Hindu joint family, the manager thereof, and in other cases the member authorised in that behalf by the family themselves

(5) Any reference in this Part of this Schedule to a retired, pensioned or discharged officer of man of the Hyderabad State Police shall be deemed not to include a reference to any person who has been dismissed or discharged from the police for disciplinary reasons

## PART IX.

### ASSAM.

#### *General requirement as to residence*

1, No person shall be qualified to be included in the electoral roll for a territorial constituency unless he has a place of

residence in the constituency, and a person shall be deemed to have a place of residence in a constituency if he ordinarily lives in the constituency or has his family dwelling place in the constituency and occasionally occupies it.

*Qualifications dependent on taxation*

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule, a person shall be qualified to be included in the electoral roll for any territorial constituency if, in the previous financial year, he either—

- (a) was assessed to income tax, or
- (b) was in the constituency assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than two rupees or, in the Sylhet municipality, of not less than one rupee eight annas, or to a tax of not less than one rupee in a Small Town, or, in the district of Sylhet, the district of Cachar or the district of Goalpara, to a tax of not less than eight annas under the Village Chaudhari Act, 1870

*Qualifications dependent on property*

3 Subject as aforesaid, a person, shall also be qualified to be included in the electoral roll for any territorial constituency if, in the constituency, he either—

- (a) is the owner of land the land revenue on which has been assessed or is assessable at not less than seven rupees eight annas per annum, or
- (b) is liable to pay a local rate of not less than eight annas per annum, or
- (c) throughout the previous financial or previous Bengali year held from a landlord land in any of the following districts, that is to say, Lakhimpur, Sibsagar, Darrang, Nowgong or Kamrup, or in the Garo Hills, and paid to the landlord rent to the value of not less than seven rupees eight annas in respect of that land

Provided that for the purposes of this paragraph land situate, and local rates levied, in the districts of Sylhet, Cachar and Goalpara shall be left out of account

*Educational qualification*

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the

middle school leaving certificate examination or any other examination prescribed as at least equivalent thereto

*Qualification by reason of service in His Majesty's forces*

5 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired pensioned or discharged member of His Majesty's Naval, Military or Air Forces or the Assam Rifles

*Additional qualification for women*

6 Subject as aforesaid a person who is a woman shall, also be qualified to be included in the electoral roll for any territorial constituency if she is the pensioned widow or pensioned mother of a person who was a member of His Majesty's Naval, Military or Air Forces or the Assam Rifles, or if she is proved in the prescribed manner to be literate, or if her husband possesses the qualifications requisite for the purposes of this paragraph

7 A husband shall be deemed to possess the qualifications requisite for the purposes of the last preceding paragraph if he—

- (a) is a retired, pensioned or discharged member of His Majesty's Naval Military or Air Forces or the Assam Rifles, or
- (b) was in the previous financial year assessed to income tax or
- (c) was in the previous financial year assessed in the constituency in respect of municipal or cantonment rates or taxes—
  - (i) in the Nowgong municipality, to not less than two rupees, or
  - (ii) in the Sylhet municipality, to not less than one rupee eight annas, or
  - (iii) elsewhere in the Province, to not less than three rupees or
- (d) was in the constituency assessed in the previous financial year to a tax of not less than one rupee in a Small Town, or
- (e) was in the constituency assessed in the previous financial year in the district of Sylhet, the district of Cachar or the district of Goalpara to a tax of not less than one rupee under the Village Chaukidari Act, 1870, or
- (f) elsewhere than in the said districts, is the owner of

land in the constituency, the land revenue on which has been assessed or is assessable at not less than fifteen rupees per annum, or

(g) is liable to pay a local rate in the constituency of not less than one rupee per annum

*Application necessary for enrolment in certain cases*

8 No person shall, by virtue of paragraph six of this Part of this Schedule, be included in the electoral roll for any territorial constituency unless application is made in the prescribed manner by her, or, if it is so prescribed, on her behalf, that she should be so included

Provided that, except in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall, in relation to women qualified by virtue of their husbands' qualifications, have effect only where the husband's qualification is that mentioned in sub-paragraph (a) of paragraph seven of this Part of this Schedule

*Special provisions as to seat reserved for women*

9 The following provisions shall have effect in relation to any constituency specially formed for the election of persons to fill the seat reserved for women—

(a) no man shall be included in the electoral roll for the constituency, or be entitled to vote at any election therein,

(b) (Omitted)

*Special provisions as to Shillong*

In the case of any territorial constituency comprising any part of Shillong, any reference in this Part of this Schedule to 'the constituency' shall be construed as including a reference to so much of the areas under the jurisdiction of the Shillong Municipal Board and Shillong Cantonment Authority as is not part of India, and any reference to municipal or cantonment rates or taxes shall be construed as including a reference to any such rates or taxes assessed by, or paid to, that Board or that authority in the exercise of any jurisdiction exercised by them in relation to areas outside India

*Special provisions as to backward areas and backward tribes*

10 No person who is entitled to vote in the election of a person to fill any of the seats to be filled by representatives of backward areas or backward tribes, or is entitled to be included in the electoral roll for any constituency formed for the purpose of filling any such seat, shall be included in the electoral

roll for any territorial constituency in the province other than any constituency specially formed for the election of persons to fill the seat reserved for women

*Interpretation, &c*

11 — (1) In this Schedule, in relation to Assam—

‘Small Town’ means a notified area constituted under Chapter XII of the Assam Municipal Act I of 1923,

“Bengali year” means a year ending on the last day of the Bengali month of Chaitra,

“local rate” means the local rate assessed under the Assam Local Rates Regulation, 1879,

“landlord” means a person under whom another person holds land immediately but does not include the Government,

“rent” includes rent in kind or partly in kind

(2) Where property is held or payments are made jointly by, or assessments are made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the necessary qualification exists, and if it does exist the person qualified shall be in the case of a *Hindu joint family*, the manager thereof, and in other cases the member authorised in that behalf by the family themselves

Provided that any other member of any such family shall also be qualified if the proportion of the joint property, payment or assessment which corresponds with his share therein would be sufficient for him to be qualified if he held it separately

PART X (Omitted).

PART XI

ORISSA

*General requirements as to residence*

1 No person shall be qualified to be included in the electoral roll for a territorial constituency unless he is resident in the constituency, and a person shall be deemed to be resident within a constituency if he ordinarily lives therein or has his family dwelling therein which he occasionally occupies, or maintains therein a dwelling-house ready for occupation, which he occasionally occupies

*Qualifications applicable to all territorial constituencies*

2 Subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule,

a person shall be qualified to be included in the electoral roll for any territorial constituency if in the previous financial year he was assessed to income tax, or was assessed to an aggregate amount of not less than one rupee, eight annas, in respect of municipal taxes

3 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is proved in the prescribed manner, to have passed the matriculation examination of any prescribed university or an examination prescribed as at least equivalent to any such examination, or if it is so prescribed, any other prescribed examination not lower than a final middle school examination

4 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for any territorial constituency if he is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air forces

5 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any territorial constituency:—

(a) if she is the pensioned widow or pensioned mother of a person who was a member of His Majesty's Naval, Military or Air Forces

(b) if her husband either is a retired, pensioned or discharged member of His Majesty's Naval, Military or Air Forces, or in the previous financial year was assessed to income tax or to an aggregate sum of not less than three rupees in respect of municipal taxes, or

(c) if she is shown in the prescribed manner to be literate

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if sub-paragraph (c) were omitted therefrom

*Special provisions as to the districts of Cuttack, Puri,  
Balasore and Angul*

6 Subject as aforesaid, a person shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Cuttack, Puri and Balasore and Angul if he either—

(a) is assessed to chaukidari tax of an annual amount of not less than nine annas or, in the case of —



member of the Scheduled castes, of not less than six annas or

- (b) holds land in the Province not situated in a municipality or an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than two rupees per annum or a local cess of not less than one anna

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if there were substituted for the reference to nine annas a reference to twelve annas

7 Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for any such constituency as is mentioned in the last preceding paragraph if she is the wife of any person who either—

- (a) is assessed to chaukidari tax of an annual amount of not less than two rupees eight annas, or
- (b) holds land in the Province, not situated in a municipality or in an area in which chaukidari tax is levied, for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or local cess of not less than eight annas

*Special provisions as to the districts of Ganjam, Koraput  
and Khondmals*

8 Subject as aforesaid, a person not being a member of a backward tribe, shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the districts of Ganjam, Koraput Khondmals—

- (a) if in any those districts he holds land not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than two rupees per annum, or
- (b) if he is a member of the scheduled castes and is a village servant, whether hereditary or not, or
- (c) without prejudice to the generality of the foregoing provisions, if, being a woman, she is the wife of a person who in any those districts holds land, not situate in a municipality, in respect of which he is liable to pay rent or land revenue of not less than sixteen rupees per annum

*Special provision as to the district of Sambalpur*

9. Subject as aforesaid, a person shall be qualified to be included in the electoral roll for any constituency situated wholly or partly in the district of Sambalpur if, in that district, he either—

- (a) holds land, not situated in a municipality or a sanitation area, for which he is liable to pay rent or land revenue of not less than one rupee per annum or village cess of not less than one anna, or
- (b) is in occupation of a house for which he is liable to pay rent of not less than six rupees per annum, not being a house in a municipality or sanitation area, or
- (c) is assessed to an annual tax of at least twelve annas under the Central Provinces Sanitation Act, 1902 or the Central Provinces Village Sanitation and Public Management Act, 1920, or
- (d) is a village servant holding office as a jhankar, ganda, kotwar, jagalia or mahar, and holds land recorded in the record of rights as service land

Provided that, in relation to the original preparation of electoral rolls and revisions thereof within three years from the commencement of Part III of this Act, this paragraph shall have effect as if for the references in sub-paragraph (a) thereof to one rupee and one anna there were substituted respectively references to two rupees and two annas

10. Subject as aforesaid, a person who is a woman shall also be qualified to be included in the electoral roll for a constituency situated wholly or partly in the district of Sambalpur if she is the wife of a person who, in that district, either—

- (a) holds land not situated in a municipality or a sanitation area for which he is liable to pay rent or land revenue of not less than sixteen rupees per annum or village cess of not less than eight annas, or
- (b) is in occupation of a house for which he is liable to pay an annual rent of not less than thirty rupees, not being a house in a municipality or sanitation area, or
- (c) is assessed to an annual tax of not less than ten rupees under the Central Provinces Sanitation Act,

1902, or the Central Provinces Village Sanitation and Public Management Act 1920

*Interpretation, & c*

II — (1) In this Schedule, in relation to Orissa—

“backward tribe” has the same meaning as in the Fifth Schedule to this Act ,

“municipality” means an area constituted a municipality under the Bihar and Orissa Municipal Act, 1922, or the Madras District Municipalities Act, 1920, or an area in respect of which a notification has issued under section three hundred and eighty-eight of the Bihar and Orissa Municipal Act, 1922 ,

“municipal tax” means a tax or rate levied in a municipality ,

“sanitation area” means an area administered under the Central Provinces Village Sanitation Act, 1902, or the Central Provinces Village Sanitation and Public Management Act, 1920 .

“chaukidari tax” means a tax levied under the Village Chaukidari Act, 1870, under section thirty of the Bihar and Orissa Village Administration Act, 1922, or under section forty-seven of the Angul Laws Regulation, 1913,

(2) Where property is held or payments are made jointly by, or assessments made jointly on, the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists, and if it does exist the person qualified shall be, in the case of a Hindu joint family the manager thereof, and in other cases the member authorised in that behalf by the family themselves

(3) Where property is held or payments are made jointly by, or assessments are made jointly on persons other than the members of a joint family, all such persons shall be regarded as a single person for deciding whether the requisite qualification exists and if it does exist, then, subject to the provisions of Part I of this Schedule and to any overriding provisions of this Part of this Schedule one and one only of those persons shall be qualified, and the persons to be qualified shall be selected in the prescribed manner

PART XII (OMITTED)  
SEVENTH SCHEDULE

(Sections 100, 104)<sup>1</sup>

LEGISLATIVE LISTS

LIST I

FEDERAL, LEGISLATIVE LIST

1 The naval, military and air forces of the Dominion and any other armed forces raised or maintained by the Dominion and armed forces which are not forces of the Dominion but are attached to or operating with any of the armed forces of the Dominion, central intelligence bureau, preventive detention for reasons of State connected with defence, external affairs or relations with Acceding States

This entry empowers the Central Legislature to legislate with respect to preventive detention for purposes connected with defence, His Majesty's relations with foreign powers or Indian States, and the maintenance of peaceful relations with Indian States *Keshav Talpade v King Emperor*, 1943 F C R 49. The case refers to the item as it appeared before amendment by the India (Provisional Constitution) Order, 1947

In a case which referred to the validity of S 2 of the Defence of India Act, the Federal Court held that the expressions "reasons of state connected with defence" and "reasons connected with the maintenance of public order" in entry No 1 of List I and entry No 2 of List II are wide enough to include "public safety or interest" *King Emperor v Sibnath Benerji*, 1944, FCR 1, see the same case on appeal to Privy Council, 1945 F C R 195 (P C)

2 Naval military and air force works, local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas

3 External affairs, the implementing of treaties and agreements with other countries, extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India

4 Ecclesiastical affairs, including European cemeteries

5 Currency, coinage and legal tender

6. Public debt of the Dominion

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<sup>1</sup> A Gazette of India Extraordinary Notification issued on October 25, 1947, announces as follows -

"In exercise of the powers conferred by section 104 of the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947, the Governor General hereby empowers all Provincial Legislatures to enact laws with respect to the requisitioning of land being a matter not enumerated in any of the lists in the Seventh Schedule to the said Act"

7 Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication, Post Office Savings Bank

8 Federal Public Services and Federal Public Service Commission

9 Dominion pensions, that is to say, pensions payable by the Dominion or out of Dominion revenues

10 Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Dominion (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Dominion law otherwise provides, and, as regards property in an Acceding State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement

Dealing with this entry and entry No 8 in List II, the Federal Court held that the powers of the Provincial Legislature to legislate with respect to "works, lands and buildings vested in or in the possession of His Majesty for purposes of the Province" is restricted to works, lands and buildings situate in the province itself. *In re allocation of lands and buildings in a Chief Commissioner's province*, 1943 F.C.R. 20

11 The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Dominion

12 Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies

13 The Benares Hindu University and the Aligarh Muslim University

14 The Survey of India, the Geological, Botanical and Zoological Surveys of India, Federal meteorological organisations

15 Ancient and historical monuments, archaeological sites and remains.

16 Census

17 Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons, who are not British subjects domiciled in India subjects of any Acceding State, pilgrimages to places beyond India

18 Port quarantine, seamen's and marine hospitals, and hospitals connected with port quarantine

19 Import and export across customs frontier as defined by the Dominion Government

20 Federal railway the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers, the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

21 Maritime shipping and navigation, including shipping and navigation on tidal waters, Admiralty jurisdiction

22 Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein

23. Fishing and fisheries beyond territorial waters

24 Aircraft and air navigation, the provision of aerodromes, regulation and organisation of air traffic and of aerodromes

25 Lighthouses, including lightships beacons and other provision for the safety of shipping and aircraft

26 Carriage of passengers and goods by sea or by air

27 Copyright, inventions, designs, trademarks and merchandise marks

28 Cheques, bills of exchange, promissory notes and other like instruments

29 Arms firearms, ammunition

30 Explosives

31 Opium, so far as regards cultivation and manufacture, or sale for export

32 Petroleum and other liquids and substances declared by Dominion law to be dangerously inflammable, so far as regards possession, storage and transport

33 Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by an Acceding State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit, but not including Universities.

34 Development of industries, where development under Dominion control is declared by Dominion law to be expedient in the public interest

35 Regulation of labour and safety in mines and oilfields

36 Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Dominion control is declared by Dominion law to be expedient in the public interest

37 The law of insurance, except as respects insurance undertaken by an Acceding State, and the regulation of the conduct of insurance business, except as respects business undertaken by an Acceding State, Government insurance, except so far as undertaken by an Acceding State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province

38 Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by an Acceding State and carrying on business only within that State

39 Extension of the powers and jurisdiction of members of a police force belonging to any province to any area in another province, but not so as to enable the police of one province to exercise powers and jurisdiction in another province without the consent of the Government of that Province, extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit

In this entry 'province' includes "a Chief Commissioner's province"

40 Elections to the Dominion Legislature, subject to the provisions of this Act

41 The salaries of the Dominion Ministers and of the President and Deputy President of the Dominion Legislature, the salaries, allowances and privileges of the members of the Dominion Legislature and the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature

42 Offences against laws with respect to any of the matters in this list

43 Inquiries and statistics for the purposes of any of the matters in this list

44 Duties of customs, including export duties

45 Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption,

(b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs,

- (c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry

46 Corporation tax

47 Salt

The question is whether the power of the Central Legislature to impose duties or taxes on salt is derived from entry No. 47, or entries No. 44 and 45 of List I. The effect of the combined operation of entry 47 of List I and of s. 100 (1) of the Constitution Act is to deny to the Provincial Legislature the power to make laws with respect to salt. *Adin Nath v. Lahore Municipality v. Daulat Ram Kapoor* 1942 FCR 131 and the following cases: 1 In re *The Central Provinces & Berar Act*, No. XIV of 1938, 1939 FCR 18; 2 *The Madras Province v. Boddu Paidunna and sons* 1942 FCR 90, and 3 *Governor General v. The Province of Madras*, 1945 FCR 179 (PC).

48 State lotteries

49 Naturalisation

50 Migration within India from or into a Governor's Province or a Chief Commissioner's Province

51 Establishment of standards of weight

52 Ranchi European Mental Hospital

53 Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers

54 Taxes on income other than agricultural income

54 A The matters specified in the proviso to sub-section (2) of s. 142A of this Act, as matters with respect to which provision may be made by laws of the Dominion Legislature

55 Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of companies

56 Duties in respect of succession to property other than agricultural land

56 A Estate duty in respect of property other than agricultural land

57 The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts

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The Madras General Sales Tax Act, 1939, is in its general scope and its detailed provisions in pith and substance an Act imposing a tax on sale of goods and is *intra vires* the Provincial Legislature under entry No. 28 of List II. The tax imposed by the Madras Act is not a duty of excise in the cloak of a tax on excise. *The Governor General in Council v. The Province of Madras*, 1945 FCR 179



58 Terminal taxes on goods or passengers carried by railway or air, taxes on railway fares and freights

59 Fees in respect of any of the matters in this list, but not including fees taken in any Court

The effect of the opening words of sub section (1) of s 100, "notwithstanding anything in the two next succeeding sub sections" and of the opening words in sub section (3) of s 100 of the Govt of India Act "subject to the two preceding sub-sections" is that if the legislative powers of the Federal and Provincial Legislatures enumerated in List I and List II of the 7th Schedule cannot be fairly reconciled, the latter must give way to the former. It is right however first to consider whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List, a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the Provincial Legislative List a meaning which it can properly bear. *Governor General in Council v the Province of Madras, 1945 FCR 179*

## LIST II

### PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power), the administration of justice, constitution and organisation of all courts, except the Federal Court, and fees taken therein, preventive detention for reasons connected with the maintenance of public order, persons subjected to such detention

2 Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list, procedure in Rent and Revenue Courts

3. Police, including railway and village police

4 Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other units for the use of prisons and other institutions

5 Public debt of the Province

6 Provincial Public Services and Provincial Public Service Commissions

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues

8 Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province

9 Compulsory acquisition of land

10 Libraries, museums and other similar institutions controlled or financed by the Province

11 Elections to the Provincial Legislature, subject to the provisions of this Act

12 The salaries of the Provincial Ministers, of the Spea

cker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof, the salaries, allowances and privileges of the members of the Provincial Legislature, and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature

13 Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration

14 Public health and sanitation, hospitals and dispensaries, registration of births and deaths

15 Pilgrimages, other than pilgrimages to places beyond India

16 Burials and burial grounds

17 Education, including Universities other than those specified in paragraph 13 of List I

18 Communications, that is to say, roads bridges, ferries, and other means of communication not specified in List I, minor railways subject to the provisions of List I with respect to such railways, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways, ports, subject to the provisions in List I with regard to major ports vehicles other than mechanically propelled vehicles

19 Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power

20 Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases, improvement of stock and prevention of animal diseases, veterinary training and practice, pounds and the prevention of cattle trespass

21 Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant and the collection of rents, transfer, alienation and devolution of agricultural land, land improvement and agricultural loans, colonization, Courts of Wards, encumbered and attached estates, treasure trove.

When a Legislature with limited and restricted powers makes use in an Act of a word of such wide and general import as 'property', the presumption must be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other. *In re Hindu Women's Rights to Property Act 1941 FCR 12*

- 22 Forests
  - 23 Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Dominion control
  - 24 Fisheries
  - 25 Protection of wild birds and wild animals
  - 26 Gas and gasworks
  - 27 Trade and commerce within the Province, markets and fairs, money lending and money lenders
  - 28 Inns and inkeepers
  - 29 Production, supply and distribution of goods, development of industries subject to the provisions in List I with respect to the development or certain industries under Dominion control
  - 30 Adulteration of foodstuffs and other goods, weights and measures.
  - 31 Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III
- The power to legislate with respect to intoxicating liquors", unless the meaning of the words used is restricted or controlled by the context or by other provisions in the Act includes the power to prohibit intoxicating liquors throughout the province or in any specified part of the province *Bhola Prasad v King Emperor*, 1942 FCR 17
- 32 Relief of the poor, unemployment.
  - 33 The incorporation, regulation, and winding-up of corporations not being corporations specified in List I or Universities, unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies
  - 34 Charities and charitable institutions, charitable and religious endowments.
  - 35 Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition
  - 36 Betting and gambling
  - 37, Offences against laws with respect of any of the matters in this list
  - 38 Inquiries and statistics for the purpose of any of the matters in this list

39 Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue

40 Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

- (a) alcoholic liquors for human consumption,
- (b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs,
- (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry

41 Taxes on agricultural income

42 Taxes on lauds and buildings, hearths and windows

43 Duties in respect of succession to agricultural land

43A Estate duty in respect of agricultural land

44 Taxes on mineral rights subject to any limitations imposed by any Act of the Dominion Legislature relating to mineral development

45 Capitation taxes

46 Taxes on professions, trades callings and employments, subject, however, to the provisions of s 142A of this Act

47 Taxes on animals and boats

48 Taxes on the sale of goods and on advertisements

48A Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.

48B Taxes on the consumption or sale of electricity, subject, however, to the provisions of s 154A of this Act

49 Cesses on the entry of goods into a local area for consumption, use or sale therein

50 Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling

51 The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty

52 Dues on passengers and goods carried on inland water-ways

53 Tolls

54 Fees in respect of any of the matters in this list, but not including fees taken in any Court

## LIST III

## CONCURRENT LEGISLATIVE LIST

## PART I

1 Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power

2 Criminal procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act

3 Removal of prisoners and accused persons from one unit to another unit

4 Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act, the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands including arrears of land revenue and sums recoverable as such, arising outside that Province

5 Evidence and oaths, recognition of laws public acts and records and judicial proceedings

6 Marriage and divorce, infants and minors, adoption

7 Wills, intestacy, and succession, save as regards agricultural land

When a Legislature with limited and restricted powers makes use in an Act of such wide and general import as "property", the presumption must be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no other *In re Hindu Women's Rights to Property Act, 1941* FCR 12

8 Transfer of property other than agricultural land, registration of deeds and documents

9 Trusts and Trustees

10 Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land

11 Arbitration

12 Bankruptcy and insolvency, administrators-general and official trustees.

13 Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

14 Actionable wrongs, save in so far as included in laws

with respect to any of the matters specified in List I or List II

15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list

16. Legal, medical and other professions

17 Newspapers, books and printing presses.

18 Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

19 Poisons and dangerous drugs

20 Mechanically propelled vehicles

21 Boilers

22 Prevention of cruelty to animals

23 European vagrancy, criminal tribes

24 Inquiries and statistics for the purpose of any of the matters in this Part of this List

25 Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

## PART II

(s.12 6(2)).

26 Factories

27 Welfare of labour, conditions of labour, provident funds, employers' liability and workmen's compensation, health insurance, including invalidity pensions, old age pensions

28 Unemployment insurance

29 Trade unions industrial and labour disputes

30 The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants

31. Electricity.

32 Shipping and Navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, carriage of passengers and goods on inland waterways

33 The sanctioning of cinematograph films for exhibition

34 Persons subjected to preventive detention under Dominion authority

135 Inquiries and statistics for the purpose of any of the matters in this Part of this List

136 Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court

EIGHTH SCHEDULE

(Omitted)

NINTH SCHEDULE

(Omitted)

TENTH SCHEDULE

Section 321

ENACTMENTS REPEALED

Session and Chapter of Act	Title	Extent of Repeal
21 Geo 3 c 70	The East India Company Act, 1780	Section eighteen
37 Geo 3 c 142	The East India Act, 1797	Section twelve
16 & 17 Vict c 107	The Customs Consolidation Act, 1853	Section three hundred and twenty-nine
23 & 24 Vict c 89.	An Act to extend in certain cases the provisions of the Superannuation Act, 1859	The whole Act
47 & 48 Vict c 38	The Indian Marine Service Act, 1884	The whole Act
56 & 57 Vict c 62	The Madras and Bombay Armies Act, 1893	The whole Act.
5 & 6 Geo 5 c 61	The Government of India Act, 1915	The whole Act
6 & 7 Geo 5 c 37	The Government of India (Amendment) Act, 1916	The whole Act, except sections six and eight
9 & 10 Geo 5 c 101	The Government of India Act, 1919	The whole Act, except the Preamble and sub-section (1) of section forty-seven
12 & 13 Geo 5 c 20	The Indian High Courts Act, 1922	The whole Act,
14 & 15 Geo 5 c 28	The Government of India (Leave of Absence) Act, 1924	The whole Act
15 & 16 Geo 5 c 83	The Government of India (Civil Services) Act, 1925	The whole Act
17 & 18 Geo 5 c 8	The Government of India (Indian Navy) Act, 1927	The whole Act, except section two and sub-section (1) of section four.



Session and Chapter of A	Title	Extent of Repeal
17 & 18 Geo 5 c 24	The Government of India (Statutory Commission) Act, 1927	The whole Act
20 & 21 Geo 5 c 2	The Government of India (Aden) Act, 1929	The whole Act
23 & 24 Geo 5 c 23	The Government of India (Amendment) Act, 1933	The whole Act
23 & 24 Geo 5 c 36	The Administration of Justice (Miscellaneous Provisions) Act, 1933	In the First Schedule the words '5 & 6 "Geo 5 c 61, the "Government of "India Act, section "one hundred and "twenty-seven"

ANNEXURE I

The India (Proclamations of Emergency) Act, 1946

(9 10 Geo 6, Ch 23)

*An Act to amend the Government of India Act, 1935, as respect the effect of proclamations of emergency under section one hundred and two of that Act*

14th February, 1946

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows —

*1 Amendment of s 102 of Government of India Act, 1935*

In sub-section (1) of section one hundred and two of the Government of India Act, 1935 ( 26 Geo, 5 & 1 Edw 8 c 2 ) (which enables the Central Legislature, where a Proclamation of Emergency is in force, to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List), after the words "enumerated in the Provincial Legislative List" there shall be inserted the words "or to make laws whether or not for a Province or any part thereof, with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act"

*2 Commencement and transitional provision*

(1) Subject to the Provisions of this section, this Act shall be deemed to have come into operation on the commencement of part III of the Government of India Act, 1935.

(2) Where, before the passing of this Act, a High Court in British India has given a judgment or made a final order in any civil proceedings involving a question as to the validity of any law, ordinance, order, bye-law, rule or regulation passed or made in India, any party to the proceedings may, at any time within ninety days from the passing of this Act, apply —

(a) where an appeal from the judgment or order has been decided by the Federal Court, to the Federal Court, and

(b) in any other case, to the High Court for a review of the proceedings in the light of the provisions of this Act, and the Court to which the application is made shall review the proceedings accordingly and make such order if any varying or reversing the judgment or order previously given or made, as may be necessary to give effect to the provisions of this Act

Provided that, on any such application, the Court may

make such order as to the costs of the application and of the proceedings as may be just, and, where it varies or reverses the original judgment or order, may order any party in whose favour the variation or reversal operates to pay to any party adversely affected by the variation or reversal such compensation as may be just for any loss sustained by him which is attributable to anything reasonably done by him in reliance on the original judgment or order

### 3 Short title

(1) This Act may be cited as the India (Proclamations of Emergency) Act, 1946

## ANNEXURE II

### The India (Central Government and Legislature) Act, 1946

(9 & 10 Geo, 6 Ch 39), as amended by the Provisional  
Constitution Order

An Act to amend the Government of India Act, 1935, with respect to the qualifications of members of the Governor-General's Executive Council, to extend temporarily the powers of the Indian Legislature to make laws, to amend sub-section (4) of section one hundred and two of the said Act as to the effect of laws passed by virtue of a Proclamation of Emergency, and for purposes connected with the matters aforesaid

26th March, 1946

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows —

1 (omitted),

### 2 Trade and commerce and unemployment

(1) Notwithstanding anything in the Government of India Act, 1935, the Dominion Legislature shall during the period mentioned in section four of this Act have power to make laws with respect to the following matters —

(a) trade and commerce (whether or not within a province) in and the production, supply and distribution of cotton and woollen textiles, paper (including newsprint), foodstuffs (including edible oil seeds and oils), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica, and

(b) unemployment among persons who have been serving during the present war in the armed forces of His Majesty or of

any Indian State, and, so far as relates to the rehabilitation of disabled persons and the setting up and carrying on of labour exchanges, employment information bureaux and retaining establishments for persons whether disabled or not, unemployment among other persons who have been serving or have been employed in connection with the present war (whether their service or employment was by or under the Crown or not), and

(c) offences against laws with respect to any of the matters mentioned in the preceding paragraphs of this subsection, enquiries and statistics for the purposes of any of those matters, jurisdiction and powers of all Courts, except the Federal Court, with respect to any of those matters, and fees in respect of any of those matters, but not including fees taken in any Court, but any law made by the Indian Legislature which that Legislature would not, but for the provisions, of this section, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of the said period except as respects things done or omitted to be done before the expiration thereof

(2) Any power of the Indian Legislature to make laws under this section with respect to any matter shall include power to make laws as respects a Province conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Dominion or officers and authorities of the Dominion as respects that matter, notwithstanding that it is one in respect of which the Provincial Legislature also has power to make laws

(3) No Bill or amendment making any provision which the Indian Legislature would not, but for the provisions of this section, have been competent to make, shall be introduced or moved in the Indian Legislature without the previous sanction of the Governor-General

(4) Subsection (2) of section one hundred and seven of the Government of India, Act, 1935 (which relates to inconsistency between Dominion laws and Provincial laws) and subsection (2) of section one hundred and twenty-six of that Act (which relates to the giving of directions to a Province as to the carrying into execution of Dominion laws relating to matters specified in Part II of the Concurrent Legislative List) shall apply in relation to a law enacted by virtue of this section with respect to any matter, being a matter with respect to which a province has power to make laws as if that matter were a matter specified in Part II of the Concurrent Legislative List.

### 3 Requisitioned Land —

(1) Notwithstanding anything in the Government of

India Act 1935, the powers of the Dominion Legislature to make laws shall extend to the making of laws—

(a) providing, in relation to land, in a province which, when the Act of the Indian Legislature known as the Defence of India Act, 1939, expires, is subject to any requisition effected under the rules made under that Act, for the continuance, until not later than the end of the period mentioned in section four of this Act, of all or any of the powers theretofore exercisable under the said Act of the Indian Legislature or the said rules, and

(b) providing, in particular, for the continuance as aforesaid of the power of the Central Government compulsorily to acquire any such land as aforesaid for any purposes directly and without the interposition of any Province, and any laws made by virtue of this subsection may contain provisions with respect to offences against the laws, enquiries and statistics for the purposes of the laws, jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters dealt with by the laws and fees in respect of any of those matters, but not including fees taken in any Court, and subsections (2) to (4) of the last preceding section shall apply in relation to any such laws as they apply in relation to laws made under that section

## 2 Nothing in this section shall

(a) prejudice any power of the Dominion to acquire land in accordance with section one hundred and twenty-seven of the Government of India Act, 1935 (which enables land to be acquired by the Governor-General in Council through the intermediacy of a Province), or

(b) affect the provisions of subsection (2) of section two hundred and ninety-nine of that Act (which requires any law authorising the compulsory acquisition of land to make provision for the payment of compensation)

(3) In this section, the expression "land" includes immovable property of every kind

4 Duration of legislative powers under this Act—  
The period mentioned in the two last preceding sections is the period of one year beginning with the date on which the Proclamation of Emergency in force at the passing of this Act ceases to operate or, if the Governor-General by public notification so directs, the period of two years beginning with that date,

Provided that if and so often as a resolution approving the extension of the said period is passed by the Dominion Legislature, the said period shall be extended for a further period

of twelve months from the date on which it would otherwise expire so, however that it does not in any case continue for more than five years from the date on which the Proclamation of Emergency ceases to operate. ●

4A. Powers of the Dominion Legislature to be powers of the Constituent Assembly—The powers of the Dominion Legislature under this Act shall, until other provision is made by or in accordance with a law made by the Constituent Assembly under sub-section (1) of section 8 of the Indian Independence Act, 1947, be exercisable by that Assembly, and accordingly references in this Act to the Dominion Legislature shall be construed as references to the Constituent Assembly.

5 Duration of laws passed by virtue of a Proclamation of Emergency—A law made by the Indian Legislature whether before or after the passing of this Act, during the continuance in force of the Proclamation of Emergency being a law which that Legislature would not, but for the issue of such a Proclamation, have been competent to make, shall not cease to have effect as required by sub-section (4) of section one hundred and two of the Government of India Act, 1935, except to the extent to which the said Legislature would not but for the issue of that Proclamation have been competent to make it, and accordingly, in the said subsection (4) for the words 'shall cease to have effect' there shall be substituted the words "shall, to the extent of the incompetency, cease to have effect".

## PART III.

The main statutory provisions have been dealt with in the preceding Parts—Parts I and II. It now remains for us, in this Part, to trace the events leading up to the establishment of the two Dominions and the steps taken by the Governor-General consequential on and in connection with the setting up of the Dominions.

In the statement made by His Majesty's Government on June 3, 1947, the final decision was announced, and all action which has since been taken is in accordance with that decision. A reference should therefore be made first to that important pronouncement.

### *STATEMENT BY HIS MAJESTY'S GOVERNMENT*

*ON JUNE 3 1947*

The following is the announcement by His Majesty's Government which was issued from the Viceroy's House, New Delhi, on June 3rd, 1947.

#### *Introduction*

1 On February 20th, 1947, His Majesty's Government announced their intention of transferring power in British India to Indian hands by June 1948. His Majesty's Government had hoped that it would be possible for the major parties to co-operate in the working out of the Cabinet Mission's Plan of May 1946 and evolve for India a Constitution acceptable to all concerned. This hope has not been fulfilled.

2 The majority of the representatives of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, Assam, Orissa and the North-West Frontier Province, and the representatives of Delhi, Ajmer-Merwara and Coorg have already made progress in the task of evolving a new Constitution. On the other hand, the Muslim League Party, including in it a majority of the representatives of Bengal, the Punjab and Sind as also the representative of British Baluchistan, has decided not to participate in the Constituent Assembly.

3 It has always been the desire of His Majesty's Government that power should be transferred in accordance with the wishes of the Indian people themselves. This task would have been greatly facilitated if there had been agreement among the Indian political parties. In the

absence of such agreement the task of devising a method by which the wishes of the Indian people can be ascertained has devolved upon His Majesty's Government. After full consultation with political leaders in India, His Majesty's Government have decided to adopt for this purpose the plan set out below. His Majesty's Government wish to make it clear that they have no intention of attempting to frame any ultimate Constitution for India, this is a matter for the Indians themselves. Nor is there anything in this plan to preclude negotiations between communities for a united India.

### **The Issues To Be Decided**

4 It is not the intention of His Majesty's Government to interrupt the work of the existing Constituent Assembly. Now that provision is made for certain Provinces specified below, His Majesty's Government trust that, as a consequence of this announcement, the Muslim League representatives of those Provinces, a majority of whose representatives are already participating in it, will now take their due share in its labours. At the same time, it is clear that any Constitution framed by this Assembly cannot apply to those parts of the country which are unwilling to accept it. His Majesty's Government are satisfied that the procedure outlined below embodies the best practical method of ascertaining the wishes of the people of such areas on the issue whether their Constitution is to be framed—

- (a) in the existing Constituent Assembly, or
- (b) in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly.

When this has been done it will be possible to determine the authority or authorities to whom power should be transferred.

### **Bengal And The Punjab**

5 The Provincial Legislative Assemblies of Bengal and the Punjab (excluding the European members) will, therefore, each be asked to meet in two parts, one representing the Muslim majority districts and the other the rest of the Province. For the purpose of determining the population of districts, the 1941 census figures will be taken as authoritative. The Muslim majority districts in these two Provinces are set out in the Appendix to this Announcement.



6 The members of the two parts of each Legislative Assembly sitting separately will be empowered to vote whether or not the Province should be partitioned. If a simple majority of either part decides in favour of partition division will take place and arrangements will be made accordingly.

7 Before the question as to the partition is decided, it is desirable that the representatives of each part should know in advance which Constituent Assembly the Province as a whole would join in the event of the two parts subsequently deciding to remain united. Therefore, if any member of either Legislative Assembly so demands, there shall be held a meeting of all members of the Legislative Assembly (other than Europeans) at which a decision will be taken on the issue as to which Constituent Assembly the Province as a whole would join if it were decided by the two parts to remain united.

8 In the event of partition being decided upon, each part of the Legislative Assembly will, on behalf of the areas they represent, decide which of the alternatives in paragraph 4 above to adopt.

9 For the immediate purpose of deciding on the issue of partition, the members of the Legislative Assemblies of Bengal and the Punjab will sit in two parts according to Muslim majority districts (as laid down in the Appendix) and non-Muslim majority districts. This is only a preliminary step of a purely temporary nature as it is evident that for the purposes of a final partition of these Provinces a detailed investigation of boundary questions will be needed, and, as soon as a decision involving partition has been taken for either Province, a Boundary Commission will be set up by the Governor-General, the membership and terms of reference of which will be settled in consultation with those concerned. It will be instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. It will also be instructed to take into account other factors. Similar instructions will be given to the Bengal Boundary Commission. Until the report of a Boundary Commission has been put into effect, the provisional boundaries indicated in the Appendix will be used.

#### **Sind**

10 The Legislative Assembly of Sind (excluding the European members) will at a special meeting also.

take its own decision on the alternatives in paragraph 4 above

#### **North-West Frontier Province**

11 The position of the North-West Frontier Province is exceptional. Two of the three representatives of this Province are already participating in the existing Constituent Assembly. But it is clear, in view of its geographical situation, and other considerations, that if the whole or any part of the Punjab decides not to join the existing Constituent Assembly, it will be necessary to give the North-West Frontier Province an opportunity to reconsider its position. Accordingly, in such an event, a referendum will be made to the electors of the present Legislative Assembly in the North-West Frontier Province to choose which of the alternatives mentioned in paragraph 4 above they wish to adopt. The referendum will be held under the aegis of the Governor-General and in consultation with the Provincial Government.

#### **British Baluchistan.**

12 British Baluchistan has elected a member, but he has not taken his seat in the existing Constituent Assembly. In view of its geographical situation, this Province will also be given an opportunity to reconsider its position and to choose which of the alternatives in paragraph 4 above to adopt. His Excellency the Governor-General is examining how this can most appropriately be done.

#### **Assam**

13 Though Assam is predominantly a non-Muslim Province, the district of Sylhet which is contiguous to Bengal is predominantly Muslim. There has been a demand that, in the event of the partition of Bengal, Sylhet should be amalgamated with the Muslim part of Bengal. Accordingly, if it is decided that Bengal should be partitioned, a referendum will be held in Sylhet district under the aegis of the Governor-General and in consultation with the Assam Provincial Government to decide whether the district of Sylhet should continue to form part of the Assam Province or should be amalgamated with the new Province of Eastern Bengal, if that Province agrees. If the referendum results in favour of amalgamation with Eastern Bengal, a Boundary Commission with terms of reference similar to those for the Punjab and Bengal will be set up to demarcate the Muslim majority areas of Sylhet district, and contiguous Muslim majority areas of adjoining districts, which will then be transferred to Eastern Bengal. The

rest of the Assam Province will in any case continue to participate in the proceedings of the existing Constituent Assembly

### Representation in Constituent Assemblies

14 If it is decided that Bengal and the Punjab should be partitioned, it will be necessary to hold fresh elections to choose their representatives on the scale of one for every million of population according to the principle contained in the Cabinet Mission's Plan of May 16th, 1946. Similar elections will also have to be held for Sylhet in the event of it being decided that this district should form part of East Bengal. The number of representatives to which each area would be entitled is as follows —

Province	Description of Constituency				No of Members
	General	Muslims	Sikhs	Total	
Sylhet District	1	2	Nil	3	
West Bengal	15	4	Nil	19	
East Bengal	12	29	Nil	41	
West Punjab	3	12	2	17	
East Punjab	6	4	2	12	

15 In accordance with the mandates given to them, the representatives of the various areas will either join the existing Constituent Assembly or form the new Constituent Assembly

### Administrative Matters.

16 Negotiations will have to be initiated as soon as possible on the administrative consequences of any partition that may have been decided upon —

- (a) Between the representatives of the respective successor authorities about all subjects now dealt with by the Central Government, including Defence, Finance and Communications
- (b) Between different successor authorities and His Majesty's Government for treaties in regard to matters arising out of the transfer of power
- (c) In the case of Provinces that may be partitioned, as to the administration of all provincial subjects such as the division of assets and liabilities, the police and other services, the High Courts, provincial institutions etc

### The Tribes Of The North-West Frontier

17 Agreements with tribes of the North-West Fron--

tier of India will have to be negotiated by the appropriate successor authority

### **The States**

18 His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of 12th May-1946 remains unchanged

### **Necessity For Speed**

19 In order that the successor authorities may have time to prepare themselves to take over power, it is important that all the above processes should be completed as quickly as possible. To avoid delay, the different Provinces or parts of Provinces will proceed independently as far as practicable within the conditions of this Plan. The existing Constituent Assembly, and the new Constituent Assembly (if formed) will proceed to frame Constitutions for their respective territories: they will of course be free to frame their own rules.

### **Immediate Transfer of Power**

20 The major political parties have repeatedly emphasized their desire that there should be the earliest possible transfer of power in India. With this desire His Majesty's Government are in full sympathy, and they are willing to anticipate the date of June, 1948, for the handing over of power by the setting up of an independent Indian Government or Governments at an even earlier date. Accordingly, as the most expeditious, and indeed the only practicable way of meeting this desire, His Majesty's Government propose to introduce legislation during the current session for the transfer of power this year on a Dominion Status basis to one or two successor authorities according to the decisions taken as a result of this announcement. This will be without prejudice to the right of the Indian Constituent Assemblies to decide in due course whether or not the part of India in respect of which they have authority will remain within the British Commonwealth.

### **Further Announcements by Governor-General**

21 His Excellency the Governor-General will from time to time make such further announcements as may be necessary in regard to procedure or any other matters for carrying out the above arrangements.

*Appendix.*

The Muslim majority districts of Punjab and Bengal according to 1941 census

## 1 The Punjab —

Lahore Division — Gujranwala, Gurdaspur, Lahore, Sheikhupura, Sialkot

Rawalpindi Division — Attock, Gujrat, Jhelum, Mianwali, Rawalpindi, Shahpur

Multan Division — Dera Ghazi Khan, Jhang, Lyallpur, Montgomery, Multan, Muzafrargarh

## 2 Bengal —

Chittagong Division — Chittagong, Noakhali, Tippera

Dacca Division — Bakerganj, Dacca, Faridpur, Mymensingh

Presidency Division — Jessore, Murshidabad, Nadia

Rajshahi Division — Bogra, Dinapur, Malda, Pabna, Rajshahi, Rangpur

— — —

**H E THE VICEROY'S MESSAGE**

The above statement represented the final decision of His Majesty's Government as to the method by which power was to be transferred from British to Indian hands. The Plan was explained by His Excellency the Viceroy in his address broadcast to the people on the 3rd June 1947. In the course of his address His Excellency observed as follows —

“Since my arrival in India at the end of March I have spent almost every day in consultation with as many of the leaders and representatives of as many communities and interests as possible. Nothing I have seen or heard in the past few weeks has shaken my firm opinion that with the reasonable measure of goodwill between the communities a unified India would be by far the best solution of the problem. For more than a hundred years 400 millions of you have lived together and this country has been administered as a single entity. This has resulted in unified communications, defence, postal services and currency, an absence of tariffs and customs barriers, and the basis for an integrated political economy. My great hope was that communal differences would not destroy all this. My first course,

in all my discussions, was therefore to urge the political leaders to accept unreservedly the Cabinet Mission plan of 16th May 1946. In my opinion that plan provides the best arrangement that can be devised to meet the interests of all the communities of India. To my great regret it has been impossible to obtain agreement either on the Cabinet Mission plan, or on any other plan that would preserve the unity of India. But there can be no question of coercing any large areas in which one community has a majority, to live against their will under a Government in which another community has a majority. And the only alternative to coercion is partition. But when the Muslim League demanded the partition of India Congress used the same arguments for demanding in that event the partition of certain Provinces. To my mind this argument is unassailable. In fact neither side proved willing to leave a substantial area in which their community have a majority under the Government of the other. I am, of course, just as much opposed to the partition of Provinces as I am to the partition of India herself and for the same basic reasons. For just as I feel there is an Indian consciousness which should transcend communal differences so I feel there is a Punjabi and Bengali consciousness which has evoked a loyalty to their Province. And so I felt it was essential that the people of India themselves should decide this question of partition.

"The procedure for enabling them to decide for themselves whether they want the British to hand over power to one or two Governments is set out in the statement which will be read to you. But there are one or two points on which I should like to add a note of explanation. It was necessary in order to ascertain the will of the people of the Punjab, Bengal and part of Assam to lay down boundaries between the Muslim majority areas and the remaining areas, but I want to make it clear that the ultimate boundaries will be settled by a Boundary Commission and will almost certainly not be identical with those which have been provisionally adopted. We have given careful consideration to the position of the Sikhs. This valiant community forms about an eighth of the population of the Punjab, but they are so distributed that any partition of this Province will inevitably divide them. All of us who have the good of the Sikh community at heart are very sorry to think that the partition of the Punjab, which they themselves desire, cannot avoid splitting them to a greater or lesser extent. The exact degrees of the split will be left to the Boundary Commission

on which they will of course be represented

"The whole plan may not be perfect, but like all plans, its success will depend on the spirit of goodwill with which it is carried out. I have always felt that once it was decided in what way to transfer power, the transfer should take place at the earliest possible moment, but the dilemma was that if we waited until a constitutional set-up for all India was agreed, we should have to wait a long time, particularly if partition were decided on. Whereas if we handed over power before the Constituent Assemblies had finished their work we should leave the country without a Constitution. The solution to this dilemma, which I put forward, is that His Majesty's Government should transfer power now to one or two Governments of British India each having Dominion Status as soon as the necessary arrangements can be made. This I hope will be within the next few months. I am glad to announce that His Majesty's Government have accepted this proposal, and are already having legislation prepared for introduction in Parliament this session. As a result of these decisions the special function of the India Office will no longer have to be carried out, and some other machinery will be set up to conduct future relations between His Majesty's Government and India.

"I wish to emphasise that this legislation will not impose any restriction on the power of India as a whole, or of the two States if there is partition, to decide in the future their relationship to each other and to other member States of the British Commonwealth. Thus the way is now open to an arrangement by which power can be transferred many months earlier than the most optimistic of us thought possible and at the same time leave it to the people of British India to decide for themselves on their future, which is the declared policy of His Majesty's Government. I have made no mention of the Indian States since the new decisions of His Majesty's Government are concerned with the transfer of power in British India."

#### **Announcements by the Governor General**

In pursuance of paragraph 21 of His Majesty's Government's statement, the Governor-General has subsequently made necessary further announcements, which are reproduced below—

#### **(1)**

*The 10th June 1947*

"In pursuance of paragraph 21 of the Statement by

His Majesty's Government dated the 3rd June 1947, His Excellency the Governor-General is pleased to direct that the following procedure shall be followed for the purpose of giving effects paragraphs 5 to 8 of the Statement.—

(1) The members of the Bengal Legislative Assembly representing for the time being the constituencies specified in Schedules I and II,\* and the members of the Punjab Legislative Assembly representing for the time being the constituencies specified in Schedules III and IV,\* shall form the two parts of the Bengal Legislative Assembly and the Punjab Legislative Assembly, respectively, for the purpose of taking the decisions referred to in paragraphs 6 and 8 of the Statement

(2) The Governor of Bengal shall summon the members forming each such part of the Bengal Legislative Assembly, and the Governor of the Punjab shall summon the members forming each such part of the Punjab Legislative Assembly, to meet on such date, at such time and in such place as he may think fit, for the purpose of taking their decisions in accordance with paragraphs 6, 7 and 8 of the Statement

(3) The Governor shall appoint one of the members of each such body to preside over its meetings, and also one of the members of either body to preside over the meeting referred to in paragraph 7 of the Statement in the event of such a meeting being held. Every such person shall have a right to vote on any issue before the meeting presided over by him, but shall not have or exercise a casting vote

(4) Each such body shall have power to act notwithstanding any vacancy in the membership thereof

(5) The President of each such body shall at the commencement of its meeting, ascertain if any member demands that the joint meeting referred to in paragraph 7 of the Statement should be held and shall forthwith communicate the result to the President of the other body. Should there be such a demand from any member, the joint meeting shall be held forthwith at such place as may have been appointed in this behalf by the Governor. Immediately on the conclusion of such joint meeting, the two bodies shall reassemble separately for the purpose of taking their decisions referred to in paragraphs 6 and 8 of the Statement

(6) Subject to the provisions of paragraphs (3), (4)

\* Not Printed



and (5) each such body shall determine its own procedure

(7) The President of each such body shall communicate its decision or decisions to the Governor.

(2)

*The 16th June 1947*

In pursuance of paragraph 21 of the Statement by His Majesty's Government dated the 3rd June 1947, His Excellency the Governor-General is pleased to direct that the following procedure shall be followed for the purpose of giving effect to paragraph 13 of the Statement :—

(1) If in accordance with the procedure laid down in the Announcement dated the 10th June 1947, it is decided that Bengal should be partitioned, the members of the Bengal Legislative Assembly representing for the time being the constituencies specified in Schedule II to that Announcement, shall forthwith proceed to decide the following question, namely —

Whether, if the referendum to be held in Sylhet District in accordance with paragraph 13 of the Statement by His Majesty's Government dated the 3rd June 1947, results in favour of the amalgamation of the district of Sylhet with the new Province of Eastern Bengal, that Province should agree to such amalgamation

(2) The member of the above body appointed by the Governor under paragraph 3 of the Announcement dated the 10th June 1947, to preside over its meetings shall preside over meetings of that body held for the purpose of deciding the above question, and shall in due course communicate its decision to the Governor of Bengal

(3) The Governor of Bengal shall communicate the terms of this announcement to all members of the above body

(3)

*The 21st June 1947*

Whereas in accordance with the provisions of paragraphs 5 to 8 of the Statement by His Majesty's Government dated the 3rd June 1947 it has on the 20th June 1947 been decided that the Province of Bengal shall be partitioned,

Now, therefore, in pursuance of paragraph 21 of the Statement His Excellency the Governor-General is pleased to direct that the following procedure shall be followed

for the purpose of giving effect to paragraph 14 of the Statement in respect of Bengal.—

(1) With effect from the date of this Announcement the members elected by the Bengal Legislative Assembly to the existing Constituent Assembly cease to be members thereof.

(2) The members of the Bengal Legislative Assembly representing for the time being the constituencies specified in Schedules I and II to the Announcement dated the 10th June 1947 shall proceed to elect their representatives to the existing Constituent Assembly and the new Constituent Assembly respectively, as laid down in paragraph 14 of the Statement by the method of proportional representation with single transferable vote

(3) The Governor of Bengal shall take such steps as may be necessary for the purpose of holding the elections referred to in paragraph (2) above

(4)

*The 21st June, 1947*

In pursuance of paragraph 21 of the Statement by His Majesty's Government dated the 3rd June 1947 the Governor General is pleased to direct that the following procedure shall be adopted for the purpose of holding a referendum in Sylhet under paragraph 13 of the Statement —

1 The referendum shall be made to the persons included in the electoral rolls for the constituencies and part constituency of the Assam Legislative Assembly specified in the Schedule\* to this Announcement .

2 The Governor-General may, in consultation with the Government of Assam, appoint a Referendum Commissioner and such other officers as may be considered necessary

3 The Referendum Commissioner shall take such steps as he may consider necessary to carry out the Referendum, and may utilise the assistance of such officers and authorities as may be placed at his disposal by the Government of Assam

4 The result of the Referendum shall be communicated to the Governor-General and to the Government of Assam by the Referendum Commissioner

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\* Not printed

( 5 )

*The 23rd June 1947*

Whereas in accordance with the provisions of paragraphs 5 to 8 of the Statement by His Majesty's Government dated the 3rd June 1947 it has on the 23 June, 1947 been decided that the Province of the Punjab shall be partitioned,

Now therefore, in pursuance of paragraph 21 of the Statement His Excellency the Governor-General is pleased to direct that the following procedure shall be followed for the purpose of giving effect to paragraph 14 of the Statement in respect of the Punjab —

(1) With effect from the date of this Announcement the members elected by the Punjab Legislative Assembly to the existing Constituent Assembly cease to be members thereof

(2) The members of the Punjab Legislative Assembly representing for the time being the constituencies specified in Schedules III and IV to the Announcement dated the 10th June 1947 shall proceed to elect their representatives to the existing Constituent Assembly and the new Constituent Assembly respectively, as laid down in paragraph 14 of the Statement, by the method of proportional representation with single transferable vote

(3) The Governor of the Punjab shall take such steps as may be necessary for the purpose of holding the elections referred to in paragraph (2) above

(6)

*The 23rd June 1947*

Whereas in accordance with the provisions of paragraphs 5 to 8 of the Statement by His Majesty's Government dated the 3rd June 1947, it has on the 23rd June 1947 been decided that the Province of the Punjab shall be partitioned,

Now, therefore, in pursuance of paragraph 21 of the Statement His Excellency the Governor-General is pleased to direct that the following procedure shall be followed for the purpose of holding a referendum in the North-West Frontier Province under paragraph 11 of the Statement —

(1) The referendum shall be made to the persons included in the electoral rolls for the territorial constituencies of the North-West Frontier Province Legislative Assembly

(2) There shall be a Referendum Commissioner for the purpose of making arrangements for, and conducting, the referendum

(3) The Referendum Commissioner shall take such steps as may be considered necessary to carry out the referendum

(4) The result of the referendum shall be communicated by the Referendum Commissioner to the Governor General and to the Government of the North-West Frontier Province

(7)

*The 24th June 1947*

In pursuance of paragraph 21 of the Statement by His Majesty's Government, dated the 3rd June 1947, His Excellency the Governor-General is pleased to direct that the following procedure shall be followed for the purpose of giving effect to paragraph 12 of the Statement

(1) The Agent to the Governor-General in Baluchistan shall summon a meeting of the members of the Shahi Jirga (excluding the Sardars nominated by the Kalat State) and the elected members of the Quetta Municipality, on such date, at such time and in such place as may be fixed by him in this behalf

(2) At the said meeting the Agent to the Governor-General shall ask the members present to decide the question whether the Constitution of the Province is to be framed in the existing Constituent Assembly or in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly

(3) Each member present at the meeting shall have one vote and the question stated above shall be decided by a simple majority of those present and voting

(4) The Agent to the Governor-General shall have power to regulate the proceedings of the meeting in such manner as he may consider fair and proper

(5) The decision taken at the meeting shall be communicated to the Governor-General by the Agent to the Governor-General and shall be deemed to be the decision of the Province

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<sup>1</sup> See Corrigendum issued on 26th June 1947, according to which the word 'elected' was substituted for the word 'non official'

(8)

*The 27th June 1947*

Whereas in accordance with paragraph 10 of the Statement by His Majesty's Government dated the 3rd June 1947, it has been decided that the Constitution of the Province of Sind shall be framed in a new and separate Constituent Assembly,

Now, therefore, in pursuance of paragraph 21 of the Statement His Excellency the Governor-General is pleased to direct as follows —

With effect from the date of this Announcement the members elected by the Sind Legislative Assembly to the existing Constituent Assembly cease to be members thereof

(9)

*The 30th June 1947*

Whereas, in accordance with the provisions of paragraph 12 of the Statement by His Majesty's Government dated the 3rd June 1947, it has on the 29th June 1947 been decided that the constitution of British Baluchistan shall be framed in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly,

Now, therefore, in pursuance of paragraph 21 of the Statement His Excellency the Governor-General is pleased to announce that with effect from the date of this Announcement the person elected by the British Baluchistan to the existing Constituent Assembly ceases to be a member thereof

(10)

*The 30th June 1947*

Whereas in accordance with the provisions of paragraphs 5 to 8 of the Statement by His Majesty's Government dated the 3rd June 1947 it has been decided that the Provinces of Bengal and the Punjab shall be partitioned —

Now, therefore, in pursuance of paragraph 21 of the Statement, His Excellency the Governor-General is pleased to make the following announcement with reference to paragraphs 9 and 13 thereof:—

(1) There shall be two Boundary Commissions, one for Bengal and the other for the Punjab, consisting of the following,—

*For Bengal—*

Chairman	To be appointed later*
Members	Mr Justice Bhan Kumar Mukherjee
	Mr Justice C C Biswas
	Mr Justice Abu Saleh Mohamed Akram
	Mr Justice S A Rahman

*For the Punjab—*

Chairman	To be appointed later†
Members	Mr Justice Din Muhammad
	Mr Justice Muhammad Munir
	Mr Justice Mehar Chand Mahajan
	Mr Justice Teja Singh

(Note—It is intended to appoint the same person as Chairman of both the Boundary Commissions)

(2) The two Boundary Commissions shall be summoned to meet as early as possible by the Governors of the respective Provinces, and shall submit their reports at the earliest possible date.

(3) The terms of reference for the two Commissions shall be as follows—

*For Bengal—*

The Boundary Commission is instructed to demarcate the boundaries of the two parts of Bengal on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors.

In the event of the referendum in the District of Sylhet resulting in favour of amalgamation with Eastern Bengal, the Boundary Commission will also demarcate the Muslim majority areas of Sylhet District and the contiguous Muslim majority areas of the adjoining districts of Assam.

*For the Punjab—*

The Boundary Commission is instructed to demarcate the boundaries of the two parts of the Punjab on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so it will also take into account other factors.

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\*Sir Cyril Radcliffe was later appointed to be the Chairman

† Sir Cyril Radcliffe was later appointed to be the Chairman

### Orders of The Governor-General

In exercise of the powers conferred on him by the provisions of the Indian Independence Act, 1947, the Governor-General of India has promulgated a number of Orders with a view to enable the Dominion form of government to function, as from the 15th of August 1947, in the two newly created States. Most of the Orders were made before the 15th August 1947. It will be noticed that, according to s 9 (4) of the Independence Act, any order made under that section, whether before or after the "appointed day" shall have effect up to the "appointed day", in British India, and on and after the "appointed day" in the new Dominion or Dominions concerned, but shall, in the case of each of the Dominions, be subject to the same powers of repeal and amendment as laws of the Legislature of the Dominion.

The following is an enumeration of the Orders relating to India so far made by His Excellency —

- (1) The Executive Council (Transitional Provisions) Order, 1947
- (2) The Joint Defence Council Order, 1947
- (3) The Federal Court Order, 1947 256
- (4) The High Courts (Bengal) Order, 1947
- (5) The High Courts (Punjab) Order, 1947
- (6) The High Court (Calcutta) Order, 1947.
- (7) The High Court (Lahore) Order, 1947
- (8) The Indian Independence (Partition Councils) Order 1947 269
- (9) The Arbitral Tribunal Order, 1947 271
- (10) The Crown Representative (Transfer of Property & Liabilities) Order, 1947
- (11) The Indian Independence (Legal Proceedings) Order, 1947
- (12) The Indian Independence (Income-Tax Proceedings) Order, 1947
- (13) The Indian Independence (Miscellaneous Transitional Provisions) Order, 1947
- (14) The India (Provisional Constitution) Order, 1947

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\*The Orders made, up to the 15th of August, 1947, in relation to Pakistan, are (1) The Pakistan (Provincial Legislatures) Order (2) The Pakistan (Adaptation of Existing Pakistan Laws) Order, (3) The Pakistan (Monetary System and Reserve Bank) Order (4) The Pakistan (Provisional Constitution) Order. They are not printed here.

- (15) The India (Provincial Legislatures) Order, 1947 283
- (16) The India (Adaptation of Existing Indian Laws) Order, 1947. 287
- (17) The Indian Independence (International Arrangements) Order, 1947 294
- (18) The Indian Independence (Rights, Property & Liabilities) Order, 1947
- (19) The Indian Naval Forces (Temporary Government) Order, 1947
- (20) The Provisional Constitution and Provincial Legislatures (Amendment) Order, 1947 305
- (21) The Bengal State Prisoners Regulation (Adaptation) Order, 1947
- (22) The India Provisional Constitution (Amendment) Order, 1947
- (23) The India Provisional Constitution (Second Amendment) Order, 1947

The various Orders are reproduced below. Orders are still being made by the Governor-General and the adaptation of the provisions of the Government of India Act, 1935, to suit the requirements of the Dominion Government is not completed yet.

### **The Executive Council (Transitional Provisions)**

**Order, 1947**

*The 19th July 1947*

In exercise of the powers conferred by sub-section (2) of section 40 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, and by paragraph (e) of sub-section (1) of section 9 of the Indian Independence Act, 1947, the Governor-General is pleased to make the following Order, namely—

1 This Order may be cited as the Executive Council (Transitional Provisions) Order, 1947

2 (1) In this Order "existing Department" means any Department of the Government of India in existence immediately before the commencement of this Order.

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3 Each existing Department shall be renamed by adding the word "India", in brackets at the end of its



former designation and, each such Department shall, as from the commencement of this Order, handle cases, exclusively or predominantly concerning the future Dominion of India

4 As from the commencement of this Order, there shall be created a Department corresponding with each existing Department, and each new Department so created—

(a) shall bear the same designation as the existing Department with the addition of the word "Pakistan" in brackets, and

(b) shall handle cases exclusively or predominantly concerning the future Dominion of Pakistan

5 Cases of common concern to the two future Dominions shall be handled in consultation by the appropriate India Department and the appropriate Pakistan Department

6 The India and Pakistan Departments shall respectively be in charge of such members of the Executive Council as the Governor-General may nominate, in that behalf

7 (1) For the purpose of dealing with any case exclusively or predominantly concerning the future Dominion of India members of the Executive Council in charge of Pakistan Departments shall not be entitled to attend the meetings of the Council, and for the purpose of dealing with any case exclusively or predominantly concerning the future Dominion of Pakistan, members of the Executive Council in charge of India Departments shall not be entitled to attend the meetings of the Council

(2) Any question as to whether a case, exclusively or predominantly concerns the future Dominion of India or Pakistan or is a case of common concern to both those Dominions shall be determined for the purposes of this Order by the Governor-General, whose determination shall be final

8 Any provision contained in the Ninth Schedule to the Government of India Act, 1935, or any rules or orders made thereunder shall, to the extent to which it is inconsistent with the provisions of this Order, cease to have effect

**The Joint Defence Council Order, 1947**

*The 11th August 1947*

In exercise of the powers conferred by sub-section (1)

of section 9 of the Indian Independence Act, 1947, and, in pursuance of sub-section (1) of section 11 thereof, the Governor-General is pleased to make the following Order:—

1 (1) This Order may be cited as the Joint Defence Council Order, 1947.

(2) It shall come into force at once.

(3) It shall cease to have effect on the first day of April, 1948.

Provided that the Governor-General of India and the Governor-General of Pakistan, acting jointly, may direct that this Order shall remain in force for such further period as may be specified in the direction.

2 (1) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order,—

"Indian forces" has the same meaning as in the Indian Independence Act, 1947,

"Dominion forces" means the armed forces of the Dominion of India or of Pakistan.

3 (1) As from the 15th day of August, 1947, there shall be set up a Council to be known as the Joint Defence Council for India and Pakistan.

(2) The said Council, hereinafter referred to as the Joint Defence Council, shall consist of—

(i) the Governor-General of India,

(ii) the Defence Minister of India,

(iii) the Defence Minister of Pakistan and

(iv) the Supreme Commander of His Majesty's Forces in India and Pakistan (hereinafter referred to as the Supreme Commander).

4 The Governor-General of India shall be the independent Chairman of the Joint Defence Council.

5 The person who at the date of the commencement of this Order is the Commander-in-Chief of His Majesty's Forces in India shall be the Supreme Commander.

6 (1) If a Defence Minister is for any reason unable to attend any meeting of the Joint Defence Council, he shall be entitled to depute another Minister or the High Commissioner for the Dominion concerned to attend the meeting in his place, and such other Minister or High

Commissioner shall have for the purposes of that meeting all the powers of the Defence Minister

(2) If the Supreme Commander is for any reason *unable to attend any meeting of the Joint Defence Council*, he shall be entitled to depute a member of his "Chiefs of Staff" committee to attend the meeting in his place, and such member shall have for the purposes of that meeting all the powers of the Supreme Commander

7 At any meeting of the Joint Defence Council,—

(a) a Defence Minister may be accompanied by another Minister,

(b) a Defence Minister or the Supreme Commander may call in to assist him at the meeting in an advisory capacity one or more experts

8 The Joint Defence Council shall be in exclusive control of—

(a) the division of the Indian forces between the Dominions and their reconstitution as two separate Dominion forces,

(b) the allocation, transfer and movement of officers and men belonging to the Indian forces for the purposes of such reconstitution,

(c) the allocation, transfer and movement for the purposes of such reconstitution of plant, machinery, equipment and stores held by the Governor-General in Council immediately before the 15th day of August, 1947, for the purposes of the Indian forces,

(d) Such naval, military and air force establishments as the Joint Defence Council may specify, for such temporary period as that Council may consider necessary or expedient,

(e) the general administration of naval, military and air force law, and the maintenance of discipline, in the armed forces of each of the two Dominions

(f) the general arrangements for the payment, food, clothing, medical attendance and equipment of the armed forces of each of the two Dominions,

(g) any armed force which may be operating, or may hereafter be sent to operate, under joint command in such areas near the boundaries between the two Dominions as are for the time being declared by or under a Provincial law to be disturbed areas,

(h) any Indian forces which are for the time being overseas

Provided that the control of the Joint Defence Council shall not extend,—

(i) except in relation to the forces mentioned in paragraphs (g) and (h) of this Article, to the disposition and operational control within the Dominion, and the local administration, of the armed forces of either Dominion, or

(ii) to the selection and recruitment of officers and men for the armed forces of either Dominion and their training, when such training takes place elsewhere than in a training establishment specified by the Joint Defence Council under paragraph (d) of this Article

Provided further that the Joint Defence Council shall cause such measures to be taken as will enable them gradually to withdraw their control in respect of all or any of the matters mentioned in paragraphs (d), (e) and (f) of this Article with a view to the cessation of control as early as may be practicable and in any event before the 1st day of April 1948

9 The executive authority of each of the two Dominions shall be so exercised as to give full effect to any orders or directions that may be made or given by the Joint Defence Council in the exercise of the powers conferred on them by this Order

10 The Supreme Commander shall be responsible for giving effect to the decisions of the Joint Defence Council and shall act in conformity with such directions as may be given to him in that behalf by the Joint Defence Council

11 The posting and promotion of any officer of His Majesty's forces who is not a member of, but is attached to or serving with, any of the Dominion forces, shall be made only in consultation with the Supreme Commander

12 Where by virtue of the provisions of this Order any members of the Indian Forces are for the time being subject to the command or control of the Supreme Commander, the Supreme Commander shall exercise—

(a) in the case of such members as are subject to the Indian Army Act, 1911, the powers of the Commander-in-Chief under that Act, and

(b) in the case of such members as are subject to the Indian Air Force Act, 1932, the powers of the Air

Officer Commanding-in-Chief under that Act,

and when any such powers are so exercised by the Supreme Commander, the powers of the Central Government under the Indian Army Act, 1911, or as the case may be, the Indian Air Force Act, 1932, shall be exercisable by the Joint Defence Council

13 There shall be two Joint Secretaries of the Joint Defence Council nominated, respectively, by the Governor-General of India and the Governor-General of Pakistan, and such other secretarial staff as may be appointed by or under the authority of the Joint Defence Council

14 There shall be set up by order of the Joint Defence Council a financial and accounting organisation charged with the duty of scrutinising and advising on proposals involving expenditure, giving financial sanction thereto and accounting for all the expenses referred to in the next succeeding Article

15 All expenses incurred by or under authority derived from the Joint Defence Council or the Supreme Commander for carrying into effect the purposes of this Order shall be borne by the Dominions of India and Pakistan in such proportion as may be determined by the Joint Defence Council

### **The Federal Court Order, 1947**

*The 11th August, 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf the Governor-General is pleased to make the following Order—

1 This Order may be cited as the Federal Court Order, 1947

2 The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 In this Order,—

"the appointed day" means the fifteenth day of August 1947

"the Federal Court", where used without qualification, means the Federal Court constituted under the Government of India Act, 1935, as in force immediately before the appointed day,

India" means the Dominion of India,

"Pakistan," means the Dominion of Pakistan

4 (1) The Federal Court shall, as from the appointed day, be the Federal Court of India, and shall accordingly be deemed to have been duly constituted as such in accordance with the provisions contained in that behalf in the Government of India Act, 1935, as it applies in relation to India on and after that day.

(2) Without prejudice to the general effect of the preceding paragraph, any person who is a judge of the Federal Court immediately before the appointed day shall, as from that day, be deemed to have been duly appointed a judge of the Federal Court of India under section two hundred, or, as the case may be, section two hundred and two, of the Government of India Act 1935, as it applies in relation to India, and shall, on and after that day, be capable of acting in his office as a judge of the Federal Court of India without making a fresh oath or observing any other formality

(3) Any rules of the Federal Court in force immediately before the appointed day shall remain in force as from that day as if duly made by the Federal Court of India, and may be varied or revoked accordingly

5 (1) Any proceedings pending in the Federal Court immediately before the appointed day may be continued in the Federal Court of India on and after that day

Provided that the Federal Court of India may, if it appears to them that any such proceedings as aforesaid ought to be transferred to the Federal Court of Pakistan, direct that the proceedings shall be so transferred, and where any such direction is given the Federal Court of Pakistan shall have jurisdiction with respect to those proceedings to the exclusion of the Federal Court of India

(2) Where any proceedings pending in the Federal Court immediately before the appointed day are continued in the Federal Court of India on or after that day, any order made in those proceedings by the Federal Court of India, or by His Majesty in Council on appeal therefrom, shall, in addition to being enforceable in India, be enforceable in Pakistan as if it were an order made by the Federal Court of Pakistan, or, as the case may be, an order made by His Majesty in Council on appeal from that Court

For the purposes of this Order proceedings shall be deemed to be pending in the Federal Court until all issues between the parties (including any issues with

respect to the taxation of the costs of the proceedings) have been finally disposed of

6 (1) Subject to the provisions hereinafter contained with respect to appeals, any order made by the Federal Court before the appointed day shall be enforceable in India as if it were an order made by the Federal Court of India, and be enforceable in Pakistan as if it were an order made by the Federal Court of Pakistan

(2) Where any such order as is mentioned in the preceding paragraph has, whether before or after the appointed day, been confirmed, varied or reversed on appeal, the decision of His Majesty in Council on the appeal shall be enforceable in India as if the decision appealed from were a decision of the Federal Court of India, and shall be enforceable in Pakistan as if the decision appealed from were a decision of the Federal Court of Pakistan

### **The High Courts (Bengal) Order, 1947**

*The 11th August 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order—

1 This Order may be cited as the High Courts (Bengal) Order, 1947

2 (1) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

(2) References herein to an order made by any court or judge shall be construed as including references to any sentence, judgment or decree passed or made by that court or judge

3 As from the 15th day of August, 1947 (hereinafter referred to as "the appointed day"), there shall be a High Court of Judicature for the Province of East Bengal, and the said court is hereinafter referred to as the High Court of East Bengal

4 (1) Between the coming into the force of this Order and the appointed day, His Majesty may appoint a Chief Justice of the said court and may appoint such other judges of the said court as he thinks fit, and any appointments so made shall take effect as from the appointed day

Provided that no person shall be qualified to be appointed a judge under this paragraph unless, under the law in force at the time of the making of this Order, he would have been qualified to be appointed a judge of the High Court in Calcutta, and no person shall be qualified to be appointed Chief Justice under this paragraph unless, under the said law, he would have been qualified to be appointed Chief Justice of the High Court in Calcutta

(2) If any judge of the High Court in Calcutta, having elected to be a judge of the High Court of East Bengal, is appointed to be a judge of that court in accordance with the preceding provisions of this Order, then, as from the appointed day, the judge so appointed shall cease to be a judge of the High Court in Calcutta

5 The High Court of East Bengal shall be a court of record, and shall have, in respect of the territories for the time being included in the Province of East Bengal, all such original appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court in Calcutta

6 (1) The High Court of East Bengal shall have the like powers to approve, admit, enrol, remove and suspend advocates, vakils and attorneys, and to make rules with respect to advocates, vakils and attorneys, as are, under the law in force immediately before the appointed day, exercisable by the High Court in Calcutta

(2) The right of audience in the High Court of East Bengal shall be regulated in accordance with the like principles as, immediately before the appointed day, are in force with respect to the right of audience in the High Court in Calcutta

Provided that, subject to any rule made or direction given by the High Court of East Bengal in the exercise of the powers conferred by this Article, any person who, immediately before the appointed day, is an advocate, vakil or attorney entitled to practice in the High Court in Calcutta, shall be recognised as an advocate, vakil or attorney entitled to practice in the High Court of East Bengal

7 Subject to the provisions of this Order, the law in force immediately before the appointed day with respect to practice and procedure in the High Court in Calcutta shall, with the necessary modifications, apply in relation to the High Court of East Bengal, and accordingly that



High Court shall have all such powers to make rules and orders with respect to practice and procedure, as are immediately before the appointed day exercisable by the High Court in Calcutta

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court in Calcutta shall, until varied or revoked by rules or orders made by the High Court of East Bengal, apply with any necessary modifications in relation to practice and procedure in the High Court of East Bengal as if made by that Court

8 (1) The High Court of East Bengal shall have a Seal consisting of the Royal Arms, with an exergue or label surrounding the same with the inscription "The Seal of the High Court of Judicature in East Bengal"

(2) The law in force immediately before the appointed day with respect to the custody of the Seal of the High Court in Calcutta shall, with the necessary modifications, apply with respect to the custody of the Seal of the High Court of East Bengal

9 The law in force immediately before the appointed day with respect to the form of writs and other processes used, issued or awarded by the High Court in Calcutta shall, with any necessary modifications, apply with respect to the form of writs and other processes used issued or awarded by the High Court of East Bengal.

10 The law in force immediately before the appointed day relating to the powers of the Chief Justice and of single judges and divisional courts of the High Court in Calcutta, and with respect to all matters ancillary to the exercise of those powers, shall, with the necessary modifications, apply in relation to the High Court of East Bengal

11 The High Court of East Bengal and the judges and divisional courts thereof shall sit at such places in the Province of East Bengal as the Chief Justice of the said court may, with the approval of the Governor of East Bengal, appoint

12 Subject to any relevant provisions contained in Part IX of the Government of India Act, 1935, as it applies in Pakistan after the appointed day, the law in force immediately before the appointed day relating to appeals to His Majesty in Council from the High Court in Calcutta and the judges and divisions thereof shall, with any necessary modifications apply in relation to appeals to

His Majesty in Council from the High Court of East Bengal and the judges and divisions thereof

13 (1) Subject as hereinafter provided, the High Court in Calcutta shall have no jurisdiction in respect of the territories for the time being included in the Province of East Bengal

(2) Notwithstanding anything contained in this Order —

- (a) any proceedings which, immediately before the appointed day, are pending in the High Court in Calcutta on its original side, including any proceedings then pending in the said High Court as a court of reference, shall be heard and determined by that court
- (b) the High Court in Calcutta shall have the like jurisdiction to hear and determine any appeal from an order of a judge of the said court on its original side as if this Order had not been made, and the High Court of East Bengal shall have jurisdiction to hear or determine any such appeal, and
- (c) the High Court in Calcutta shall have the like jurisdiction to review any order made by any judge of the said High Court as it would have had if this Order had not been made, and the High Court of East Bengal shall have no jurisdiction to review any such order

(3) Subject to the preceding provisions of this Article, all proceedings pending on the appellate side of the High Court in Calcutta immediately before the appointed day, shall, where the court of origin is, as from that day, situated in the Province of East Bengal, stand transferred by virtue of this Order to the High Court of East Bengal.

(4) Subject to the following provisions of this Article with respect to appeals, any order made by the High Court in Calcutta either

- (a) before the appointed day, or
- (b) in any proceedings with respect to which the said High Court retains jurisdiction by virtue of paragraphs (2) and (3) of this Article,

shall for all purposes have effect not only as an order of the High Court in Calcutta but also as an order made by the High Court of East Bengal

(5) Subject to the following provisions of this Article —

cle with respect to appeals, any order made by the High Court of East Bengal in proceedings transferred to that High Court by virtue of this Article, shall for all purposes have effect not only as an order of that court but also as an order made by the High Court in Calcutta

(6) Where any such order as is mentioned in paragraphs (4) and (5) of this Article has, whether before or after the appointed day, been confirmed, varied or reversed on appeal, effect shall be given to the decision of the appellate court as if the order appealed from were an order not only of the High Court by which it was made, but also of the High Court in Calcutta or the High Court of East Bengal, as the case may be

(7) Any reference in this Article to a High Court shall be construed as including a reference to a judge or division thereof, and for the purposes of this Article proceedings shall be deemed to be pending in a particular court until that court has disposed of all issues between the parties including any issues with respect to the taxation of the costs of the proceedings

14 Nothing in this Order shall prejudice the application to the High Court of East Bengal of any relevant provisions of Part IX of the Government of India Act, 1935, as it applies in relation to Pakistan, and the provisions of this Order shall have effect subject to any provision made on or after the appointed day with respect to the High Court in Calcutta or the High Court of East Bengal by any legislature or other authority having power to make such provision

### **The High Courts (Punjab) Order, 1947**

*The 11th August 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order—

1 This Order may be cited as the High Courts (Punjab) Order, 1947

2 (1) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

(2) References herein to an order made by any court or judge shall be construed as including references to any sentence, judgment or decree passed or made by that court or judge

3, As from the 15th day of August, 1947, (herein-

after referred to as "the appointed day"), there shall be a High Court of Judicature for the Province of East Punjab, and the said court is hereinafter referred to as the High Court of East Punjab

4 (1) Between the coming into force of this Order and the appointed day, His Majesty may appoint a Chief Justice of the said court and may appoint such other judges of the said court as he thinks fit, and any appointments so made shall take effect as from the appointed day

Provided that no person shall be qualified to be appointed a judge under this paragraph unless, under the law in force at the time of the making of this Order, he would have been qualified to be appointed a judge of the High Court at Lahore, and no person shall be qualified to be appointed Chief Justice under this paragraph unless, under the said law, he would have been qualified to be appointed Chief Justice of the High Court at Lahore

(2) If any judge of the High Court at Lahore, having elected to be a judge of the High Court of East Punjab, is appointed to be a judge of that court in accordance with the preceding provisions of this Order, then, as from the appointed day, the judge so appointed shall cease to be a judge of the High Court at Lahore

5 The High Court of East Punjab shall be a Court of record, and shall have, in respect of the territories for the time being included in the Province of East Punjab and in the Province of Delhi, all such original appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court at Lahore

6 (1) The High Court of East Punjab shall have the like powers to approve, admit, enrol, remove and suspend advocates, vakils and attorneys, and to make rules with respect to advocates, vakils and attorneys, as are, under the law in force immediately before the appointed day, exercisable by the High Court at Lahore

(2) The right of audience in the High Court of East Punjab shall be regulated in accordance with the like principles as, immediately before the appointed day, are in force with respect to the right of audience in the High Court at Lahore

Provided that, subject to any rule made or direction given by the High Court of East Punjab in the exercise of

the powers conferred by this Article, any person who, immediately before the appointed day, is an advocate, vakil or attorney entitled to practise in the High Court at Lahore, shall be recognised as an advocate, vakil or attorney entitled to practise in the High Court of East Punjab

7 Subject to the provisions of this Order, the law in force immediately before the appointed day with respect to practice and procedure in the High Court at Lahore shall, with the necessary modifications, apply in relation to the High Court of East Punjab, and accordingly that High Court shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court at Lahore

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court at Lahore shall, until varied or revoked by rules or orders made by the High Court of East Punjab, apply with any necessary modifications in relation to practice and procedure in the High Court of East Punjab as if made by that Court

8 (1) The High Court of East Punjab shall have a Seal consisting of the Royal Arms with an exergue or label surrounding the same with the inscription 'The Seal of the High Court of Judicature in East Punjab'

(2) The law in force immediately before the appointed day with respect to the custody of the Seal of the High Court at Lahore shall, with the necessary modifications, apply with respect to the custody of the Seal of the High Court of East Punjab

9 The law in force immediately before the appointed day with respect to the form of writs and other processes used, issued or awarded by the High Court at Lahore shall, with any necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded by the High Court of East Punjab

10 The law in force immediately before the appointed day relating to the powers of the Chief Justice and of single judges and divisional courts of the High Court at Lahore, and with respect to all matters ancillary to the exercise of those powers, shall, with the necessary modifications, apply in relation to the High Court of East Punjab.

11 The High Court of East Punjab and the judges and divisional courts thereof shall sit at such places in the

Provinces of East Punjab and Delhi as the Chief Justice of the said court may, with the approval of the Governor of East Punjab, appoint

12. Subject to any relevant provisions contained in Part IX of the Government of India Act, 1935, as it applies in India after the appointed day, the law in force immediately before the appointed day relating to appeals to His Majesty in Council from the High Court at Lahore and the judges and divisions thereof shall, with any necessary modifications, apply in relation to appeals to His Majesty in Council from the High Court of East Punjab and the judges and divisions thereof

13 (1) Subject as hereinafter provided, the High Court at Lahore shall have no jurisdiction in respect of the territories for the time being included in the Province of East Punjab or in the Province of Delhi

(2) Notwithstanding anything contained in this Order.—

- (a) any proceedings which, immediately before the appointed day, are pending in the High Court at Lahore on its original side, including any proceedings then pending in the said High Court as a court of reference, shall be heard and determined by that court,
- (b) the High Court at Lahore shall have the like jurisdiction to hear and determine any appeal from an order of a judge of the said court on its original side as if this Order had not been made, and the High Court of East Punjab shall have jurisdiction to hear or determine any such appeal, and
- (c) the High Court at Lahore shall have the like jurisdiction to review any order made by any judge of the said High Court as it would have had if this Order had not been made, and the High Court of East Punjab shall have no jurisdiction to review any such order
- (3) Subject to the preceding provisions of this Article, all proceedings pending on the appellate side of the High Court at Lahore immediately before the appointed day, shall, where the court of origin is as from that day situated in the Province of East Punjab or in the Province of Delhi, stand transferred by virtue of this Order to the High Court of East Punjab
- (4) Subject to the following provisions of this Article,

cle with respect to appeals, any order made by the High Court at Lahore either—

(a) before the appointed day, or

(b) in any proceedings with respect to which the said High Court retains jurisdiction by virtue of paragraphs (2) and (3) of this Article,

shall for all purposes have effect not only as an order of the High Court at Lahore but also as an order made by the High Court of East Punjab

(5) Subject to the following provisions of this Article with respect to appeals, any order made by the High Court of East Punjab in proceeding, transferred to that High Court by virtue of this Article shall for all purposes have effect not only as an order of that court but also as an order made by the High Court at Lahore

(6) Where any such order as is mentioned in paragraphs (4) and (5) of this Article has, whether before or after the appointed day, been confirmed, varied or reversed on appeal, effect shall be given to the decision of the appellate court as if the order appealed from were an order not only of the High Court by which it was made, but also of the High Court at Lahore or the High Court of East Punjab, as the case may be

(7) Any reference in this Article to a High Court shall be construed as including a reference to a judge or division thereof, and for the purposes of this Article proceedings shall be deemed to be pending in a particular court until that court has disposed of all issues between the parties, including any issues with respect to the taxation of the costs of the proceedings

14. Nothing in this Order shall prejudice the application to the High Court of East Punjab of any relevant provisions of Part IX of the Government of India Act, 1935, as it applies in relation to India, and the provisions of this Order shall have effect subject to any provision made on or after the appointed day with respect to the High Court at Lahore or the High Court of East Punjab by any legislature or other authority having power to make such provision

**The High Court (Calcutta) Order, 1947**

*The 11th August 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other

powers enabling him in that behalf, the Governor-General is pleased to make the following Order —

1. This Order may be cited as the High Court (Calcutta) Order, 1947.

2 (1) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2). In this Order —

“the appointed day” means the 15th day of August 1947

“the High Court in Calcutta” means the High Court of Judicature at Fort William in Bengal, constituted in accordance with Letters Patent, dated the 28th December, 1865

3 The High Court in Calcutta shall continue to exist on and after the appointed day, and shall, save as expressly provided by the High Courts (Bengal) Order, 1947, have all such original appellate and other jurisdiction as it had immediately before that day

4 Without prejudice to the general effect of the preceding Article, any person holding office as a Judge of the High Court in Calcutta immediately before the appointed day (including the person holding office as Chief Justice of the said Court and any person holding office as a temporary or additional judge thereof) shall, subject to the provisions of the High Courts (Bengal) Order, 1947, continue, as from that day, to hold the like office on the same terms and conditions as were applicable in his case immediately before that day

5 Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is serving as a clerk or other officer of the High Court in Calcutta shall, as from that day, remain in the service of the said Court on the like terms and conditions as were applicable to him immediately before that day

Provided that the Chief Justice of the said Court may, on or after the appointed day, determine the appointment of any such person as aforesaid if he thinks it expedient so to do having regard to any changes effected by or under the Indian Independence Act, 1947

6 Any rules or orders with respect to practice or procedure in force in the High Court in Calcutta imme-



diately before the appointed day shall remain in force as from that day until altered or modified by a competent authority

7 Nothing in this Order shall prejudice the application to the High Court in Calcutta of any relevant provisions of Part IX of the Government of India Act, 1935 as it applies in relation to the Dominion of India, and the provisions of this Order shall have effect subject to any provision made on or after the appointed day with respect to the High Court in Calcutta by any legislature or other authority having power to make such provision

**The High Court (Lahore) Order, 1947**

*The 11th August, 1947.*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1946, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order —

1 This Order may be cited as the High Court (Lahore) Order, 1947

2 (1) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

(2) In this Order —

"The appointed day" means the 15th day of August, 1947

"the High Court at Lahore" means the High Court of Judicature at Lahore, established by Letters Patent, dated the 21st March 1919

3 The High Court at Lahore shall continue to exist on and after the appointed day and shall save as expressly provided by the High Courts (Punjab) Order, 1947, have all such original appellate and other jurisdiction as it had immediately before that day

4 Without prejudice to the general effect of the preceding Article, any person holding office as a judge of the High Court at Lahore immediately before the appointed day (including the person holding office as Chief Justice of the said Court and any person holding office as a temporary or additional judge thereof) shall, subject to the provisions of the High Courts (Punjab) Order, 1947, continue, as from that day, to hold the like office on the same terms and conditions as were applicable in his case immediately before the day

5 Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is serving as a clerk or other officer of the High Court at Lahore shall, as from that day, remain in the service of the said Court on the like terms and conditions as were applicable to him immediately before that day.

Provided that the Chief Justice of the said Court may, on or after the appointed day, determine the appointment of any such person as aforesaid if he thinks it expedient so to do having regard to any changes effected by or under the Indian Independence Act, 1947

6 Any rules or orders with respect to practice or procedure in force in the said High Court at Lahore immediately before the appointed day shall remain in force as from that day until altered or modified by a competent authority

7 Nothing in this Order shall prejudice the application to the High Court at Lahore of any relevant provisions of Part IX of the Government of India Act, 1935, as it applies in relation of the Dominion of India, and the provisions of this Order shall have effect subject to any provision made on or after the appointed day with respect to the High Court at Lahore by any legislature or other authority having power to make such provision

**Indian Independence (Partition Councils) Order, 1947**

**The 12th August 1947**

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order—

1 (1) This Order may be cited as the Indian Independence (Partition Councils) Order, 1947

(2) It shall come into force at once

2 The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 As from the fifteenth day of August, 1947, there shall be set up in the manner hereinafter provided 4 bodies to be known respectively as—

- (i) the Partition Council for India and Pakistan
- (ii) the Bengal Separation Council,
- (iii) the Punjab Partition Committee, and

(iv) the Assam Separation Council

4 (1) The Partition Council for India and Pakistan shall consist of—

(a) two representatives of India who shall be Ministers of the Government of India, and

(b) two representatives of Pakistan, one of whom shall be a Minister of the Government of Pakistan and the other shall be either another such Minister or the High Commissioner for Pakistan in India

(2) The meetings of the Partition Council shall be held alternately under the Chairmanship of one of the said representatives of India or one of the said representatives of Pakistan

(3) The High Commissioner for Pakistan in India shall be entitled to attend as an observer any of the meetings of the Partition Council at which Pakistan is represented by two Ministers

5, (1) The Bengal Separation Council shall consist of two representatives of East Bengal and two representatives of West Bengal

(2) The Punjab Partition Committee shall consist of two representatives of West Punjab and two representatives of East Punjab

(3) The Assam Separation Council shall consist of two representatives of East Bengal and two representatives of Assam

(4) The said representatives shall be such persons as may be nominated by the Governor of the Province concerned, and different persons may be nominated for different meetings of the Council or Committee, as the case may be

6 The meetings of each of the bodies mentioned in Article 5 shall be held—

(a) alternately in the capital towns of the two Provinces represented on that body, and

(b) under the chairmanship of the Governor of the Province in which the meeting is so held

For the purposes of this Article a series of meetings held in one place from day to day shall be deemed to be a single meeting.

7 It shall be the duty of each of the bodies mentioned in Article 3—

- (a) to consider all questions relating to such of the matters mentioned in Article 4 of the Arbitral Tribunal Order, 1947, as are the concern of that body, and attempt to reach an agreed decision on all such questions,
- (b) in the event of their failure to reach an agreed decision on any such question as aforesaid, to make a reference in accordance with the provisions of the said Order to the Arbitral Tribunal set up by that Order, and
- (c) to consider any other question of common concern to the Dominions of India and Pakistan or, as the case may be, to the respective Provinces, arising in connection with the transition to the provisions of the Indian Independence Act, 1947

#### The Arbitral Tribunal Order, 1947

*The 12th August 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order —

1 (1) This Order may be cited as the Arbitral Tribunal Order, 1947

(2) It shall come into force at once

2 The Interpretation Act 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament<sup>2</sup>

3. (1) As from the fourteenth day of August, 1947, there shall be set up an Arbitral Tribunal (hereinafter referred to as 'the Tribunal') consisting of a Chairman who shall be nominated by the Governor-General, and two members who shall be so nominated, one to represent the future Dominion of India and the other to represent the future Dominion of Pakistan

(2) If the office of the Chairman becomes vacant it shall be filled by such person as the Governors-General of the two Dominions may agree to nominate as Chairman,

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<sup>2</sup> By a notification dated the 15th August 1947, the following were nominated to serve on the Tribunal —

- (1) The Hon'ble Sir Patrick Spens, OBE, Chairman,
- (2) The Hon'ble Sir Harilal J Kania, member for India,
- (3) Khan Bahadur M Ismail member for Pakistan

and, if the office of a member becomes vacant it shall be filled by such person as the Governor-General of the Dominion concerned may nominate as member

4 (1) The Tribunal shall have power to make awards in respect of references made to it before the first day of December, 1947, or with the permission of the Chairman before the first day of January, 1948, by any of the bodies hereinafter mentioned being references relating to any of the following matters, namely —

- (a) the division between the Dominions of India and Pakistan, of the assets and liabilities of the Governor-General in Council,
- (b) the apportionment between the Dominions of India and Pakistan of expenses incurred by or under authority derived from the Joint Defence Council of the Supreme Commander for carrying into effect the purposes of the Joint Defence Council Order, 1947,
- (c) the amount of assets and liabilities of the Reserve Bank of India to be transferred to Pakistan when the Reserve Bank of India ceases to be the bank of issue for Pakistan or the Central Bank of Pakistan,
- (d) the apportionment between the Dominions of India and Pakistan of the current earnings of foreign exchange including current releases of sterling by His Majesty's Government in the United Kingdom, during the period when the Reserve Bank of India administers common exchange controls on behalf of both the Dominions,
- (e) the division between the new Provinces of East Bengal and West Bengal, of the assets and liabilities of the existing Province of Bengal,
- (f) the allocation to the new Province of East Bengal of any of the assets and liabilities of the Province of Assam,
- (g) the division between the new Provinces of West Punjab and East Punjab, of the assets and liabilities of the existing Province of the Punjab, and
- (h) any other matter arising directly out of partition

(2) The bodies referred to in paragraph (1) of this Article are the bodies which on the date of the commencement of this Order are known as—

- (a) the Partition Council,
- (b) the Provisional Joint Defence Council,
- (c) the Bengal Separation Council,
- (d) the Punjab Partition Committee, and
- (e) the Assam Separation Council,

and the corresponding bodies which are to be set up as from the date of the establishment of the Dominions of India and Pakistan.

(3) Whenever the appropriate body mentioned in paragraph (2) of this Article is unable to reach an agreed decision in regard to a matter mentioned in sub-paragraphs (a) to (g) of paragraph (1) thereof, that body shall make a reference to the Tribunal, but before the first day of December, 1947, or with the permission of the Chairman before the 1st day of January, 1948, setting out as clearly as may be the matter or matters in difference.

(4) Whenever any of the bodies mentioned in paragraph (2) of this Article is unable to reach an agreed decision in regard to a matter mentioned in sub-paragraph (h) of paragraph (1) thereof, but is agreed that a reference should be made to the Tribunal, that body may make a reference before the first day of December, 1947, or with the permission of the Chairman before the first day of January, 1948, setting out as clearly as may be the matter or matters in difference.

(5) (1) Whenever any of the bodies mentioned in paragraph (2) of Article 4 is unable to agree whether or not a matter is one in regard to which that body is required by paragraph (3) of that Article to make a reference in the contingency mentioned therein, that question shall be referred to the Tribunal whose decision thereon shall be final.

(2) Where a question has been referred to the Tribunal under this Article—

(a) if the two members of the Tribunal are agreed as to the decision to be given, such decision shall be the decision of the Tribunal, and

(b) if the two members are not agreed, the Chairman shall decide the question and his decision shall be the decision of the Tribunal.

6 In respect of any reference made to the Tribunal under Article 4,—

(a) If the two members of the Tribunal are agreed as to the terms of the award to be made, the Chairman shall make the award in those terms, and

(b) in the event of disagreement between the two members with regard to any matter arising out of the reference, the Chairman shall decide such matter and make the award accordingly

Provided that the body making the reference may, at any time before the award is made, withdraw the reference by notice in writing to the Tribunal

7, (1) Every award made in accordance with the provisions of Article 6 shall be binding on the two Dominions and all Provinces and other parts thereof, and on all persons directly or indirectly concerned in or affected by the award

(2) Every such award shall be communicated forth with by the Chairman to the body by which the reference was made, the Governments of the two Dominions and the Governments of the Provinces concerned, if any

8 (1) The Tribunal shall have power—

(a) to make an award conditional or in the alternative,

(b) to correct any clerical mistake or error arising from any accidental slip or omission,

(c) Subject to the provisions of this Order, to determine its own procedure, and

(d) to appoint such ministerial officers as it may find necessary

(2) the Tribunal shall have all the powers of a civil court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898

9 Nothing contained in the Arbitration Act, 1940, shall apply to proceedings before the Tribunal

**The Crown Representative (Transfer of Property And Liabilities) Order, 1947**

*The 12th August 1947.*

In exercise of the powers conferred by section 9 of

the Indian Independence Act, 1947, and all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order—

1 (1) This Order may be cited as the 'Crown Representative (Transfer of Property and Liabilities) Order, 1947'

(2) It shall come into force on the twelfth day of August, 1947.

2 (1) In this Order, the expression "property" includes all moveable and immoveable property and all choses in action, and, in particular, includes all rights subsisting under any contract

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 All property which, immediately before the commencement of this Order, is vested in His Majesty for the purposes of the exercise of the functions of the Crown, in its relations with the Indian States is hereby vested in His Majesty for the purposes of the Governor-General in Council, and as from the commencement of this Order, all such property shall be under the control and management of the Governor-General in Council

4 All liabilities, whether arising out of a contract or otherwise, which have accrued against His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States and are outstanding immediately before the commencement of this Order shall thereafter be liabilities of the Governor-General

**The Indian Independence (Legal Proceedings)  
Order, 1947**

*The 12th August 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order—

1 (1) This Order may be cited as the 'Indian Independence (Legal Proceedings) Order, 1947'

(2) It shall come into force at once

2 (1) In this Order, "appointed day" means the fifteenth day of August, 1947

(2) The Interpretation Act, 1889, shall apply for the—



interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 Notwithstanding the setting up of the two independent Dominions of India and Pakistan and the creation of new Provinces by the Indian Independence Act, 1947,—

(1) all proceedings pending immediately before the appointed day in any of the Special Tribunals specified in column 1 of the Schedule\* to this Order shall be continued in that Tribunal as if the said Act had not been passed, and that Tribunal shall continue to have for the purposes of the said proceedings all the jurisdiction and powers which it had immediately before the appointed day,

(2) notwithstanding anything contained in any other law to the contrary, any appeal from or application for revision of any order or sentence of the Tribunal in a case specified in column 2 of the Schedule to this Order shall lie to the High Court specified in the corresponding entry in column 3 of the said Schedule, and

(3) effect shall be given within the territories of either of the two Dominions to any order or sentence of any such Special Tribunal as aforesaid and of any High Court in appeal or revision therefrom as if the order or sentence had been passed by a court of competent jurisdiction in that Dominion

4 Notwithstanding the creation of certain new Provinces and the transfer of certain territories from the Province of Assam to the Province of East Bengal by the Indian Independence Act, 1947,—

(1) all proceedings pending immediately before the appointed day in any civil or criminal court (other than a High Court) in the Province of Bengal, the Punjab or Assam shall be continued in that court as if the said Act had not been passed, and that court shall continue to have for the purposes of the said proceedings all the jurisdiction and powers which it had immediately before the appointed day,

(2) any appeal or application for revision in respect of any proceedings so pending in any such court shall lie in the court which would have appellate, or as the case may be revisional, jurisdiction over that court if the proceeding were instituted in that court after the appointed day, and

(3) effect shall be given within the territories of

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\* Not printed

either of the two Dominions to any judgment, decree, order or sentence of any such court in the said proceedings, as if it had been passed by a court of competent jurisdiction within that Dominion

**The Indian Independence (Income-Tax Proceedings)  
Order, 1947**

*The 12th August 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor General is pleased to make the following Order —

1 (1) This Order may be cited as the Indian Independence (Income-tax Proceedings) Order, 1947

(2) It shall come into force at once

2 (1) In this Order,—

“appointed day” means the fifteenth day of August, 1947,

“assessee” means a person by whom income tax or excess profits tax is payable,

“relevant Tax Act” means the Indian Income-tax Act, 1922, as subsequently amended or, as the case may be, the Excess Profits Tax Act, 1940, as subsequently amended,

“Tax Authority” means any of the following authorities mentioned in section 5 of the Indian Income-tax Act, 1922, the Appellate Tribunal mentioned in section 5 A thereof, and the Excess Profits Tax Authorities mentioned in section 3 of the Excess Profits Tax Act, 1940,

“Tax Officer” means an Income-tax Officer or an Excess Profits Tax Officer within the meaning of the relevant Tax Act

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 Where before the appointed day the jurisdiction of a Tax Officer under the relevant Tax Act has been altered in connection with the setting up of the Dominions of India and Pakistan, or where after the appointed day the case of an assessee is transferred from one Dominion to the other by agreement between the Central Boards of Revenue of the two Dominions, and by reason

of such alteration of jurisdiction or transfer the case of an assessee falls to be dealt with on or after the appointed day by the Tax Authorities of India, or as the case may be of Pakistan, all proceedings relating to the case pending 'before any Tax Authority of Pakistan, or as the case may be of India, shall be transferred to the corresponding Tax Authority of India, or as the case may be of Pakistan, and shall be disposed of by the last mentioned Tax Authority in accordance with law

4 Any such transfer shall not render necessary the re-issue of any notice already issued by a Tax Authority, whether before or after the appointed day, or the commencement *de novo* of any proceeding in the case, and all subsequent proceedings, whether by way of appeal, revision or otherwise, shall be taken before the appropriate Tax Authority of the Dominion to which the case has been so transferred

5 No such transfer shall be called in question on the ground that the Tax Authority to which the proceeding is so transferred has no jurisdiction to deal with the case

**The Indian Independence (Miscellaneous Transitional Provisions) Order, 1947.**

*The 14th August, 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf the Governor-General is pleased to make the following Order

1 (1) This Order may be cited as the Indian Independence (Miscellaneous Transitional Provisions) Order, 1947

(2) It shall come into force at once.

2. (1) In this Order,—

'appointed day' means the fifteenth day of August, 1947

'Dominions' means the Dominions of India and Pakistan,

'India' means the Dominion of India,

'Pakistan' means the Dominion of Pakistan,

'Province' includes a Chief Commissioner's Province,

'transitional period' means the period beginning on the 15th August, 1947, and ending on the 31st March, 1948

(2) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 (1) Each of the Acts mentioned in paragraph (2) of this Article, as it applies to either of the Dominions during the transitional period, shall have effect as if it extends to both the Dominions, and accordingly during that period, references to "India" in each of the said Acts as it applies to India shall be construed as including a reference to all the Provinces of Pakistan and references to "Pakistan" in each of the said Acts as it applies to Pakistan shall be construed as including a reference to all the Provinces of India

(2) The Acts referred to in paragraph (1) of this Article are —

(i) The Motor Vehicles Act, 1939 (IV of 1939),

(ii) The Indian Tea Control Act, 1938 (VIII of 1938),

(iii) The Indian Tea Cess Act, 1903 (IX of 1903),

(iv) The Trade Marks Act, 1940 (V of 1940)

4 Without prejudice to the generality of the provision contained in Article 3 in respect of the Motor Vehicles Act, 1939,—

(a) the extent of validity of any licence, certificate of registration or permit issued before the appointed day under the provisions of the said Act shall continue to be the same during the transitional period,

(b) any licence issued during the transitional period under the provisions of the said Act as it applies to either of the Dominions shall during that period be effective throughout both the Dominions,

(c) any motor vehicle registered during the transitional period in accordance with the provisions of the said Act as it applies to either of the Dominions shall not during that period require to be registered in any Province of the other Dominion, and the certificate of registration in respect of any such vehicle shall during that period be effective throughout both the Dominions

5 Without prejudice to the generality of the pro-

visions contained in Article 3 in respect of the Indian Tea Control Act, 1938, and the Indian Tea Cess Act, 1903,

- (a) the Indian Tea Licensing Committee and the Indian Tea Market Expansion Board constituted under the said Acts and in existence immediately before the appointed day shall be deemed to have been constituted under the appropriate Act as it applies to either of the Dominions on the appointed day, and the said Committee and the said Board shall accordingly be competent to exercise the powers, and perform the duties, conferred or imposed on the Committee or the Board as the case may be by or under the appropriate Act in either of the Dominions,
- (b) all powers and functions of the Central Government under each of the said Acts as it applies to Pakistan shall be exercised by the Central Government of India on behalf of the Central Government of Pakistan

6 Without prejudice to the generality of the provisions contained in Article 3 in respect of the Trade Marks Act, 1940,—

- (a) The Trade Mark Registry and the Branch thereof established, and the Registrar and Deputy Registrars of Trade Marks appointed by or under the said Act, as in force immediately before the appointed day shall be deemed to have been established or as the case may be appointed, by or under that Act as it applies to either of the said Dominions on the appointed day and the said officers shall accordingly be competent to exercise the powers, and perform the duties conferred or imposed on the Registrar and Deputy Registrars respectively of Trade Marks by or under that Act in either of the Dominions
- (b) all powers and functions of the Central Government under the said Act as it applies to Pakistan shall be exercised by the Central Government of India on behalf of the Central Government of Pakistan

7 The provisions of this Order shall have effect notwithstanding anything to the contrary contained in

the India (Adaptation of Existing Indian Laws) Order, 1947, or in the Pakistan (Adaptation of Existing Pakistan Laws) Order, 1947

**The India (Provisional Constitution) Order, 1947**

*The 14th August 1947*

Whereas by sub section (2) of section 8 of the Indian Independence Act, 1947 (hereafter in the recitals to this Order referred to as the said Act), it is provided that except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under sub-section (1) of the said section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the provisions of the Government of India Act, 1935, and that the provisions of that Act shall, so far as applicable and subject to any express provisions of the said Act and with such omissions additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section of the said Act, have effect accordingly,

And whereas by paragraph (c) of subsection (1) of section 9 of the said Act it is provided that the Governor-General shall by order make such provision as appears to him to be necessary or expedient for making omissions or additions to, and adaptations and modifications of the Government of India Act, 1935, in its application to the separate new Dominions,

And whereas by sub section (4) of section 19 of the said Act it is provided that in the said Act, except so far as the context otherwise requires, references to the Government of India Act, 1935 include references to any enactments amending or supplementing that Act and in particular references to the India (Central Government and Legislature) Act, 1946,

Now therefore in exercise of the powers conferred by the said provisions of the said Act, the Governor-General is pleased to make the following Order —

1 (1) This Order may be cited as the India (Provisional Constitution) Order, 1947

(2) It shall come into force on the fifteenth day of August 1947, which day is hereinafter referred to as "the appointed day"

2 (1) In this Order "India" means the Dominion of India

(2) Where a provision of the Government of India Act, 1935, has been amended before the appointed day, a reference to that provision in the Schedule† to the Order shall be read as referring to the provision as in force immediately before the appointed day

(2) The Interpretation Act, 1889, applies for the interpretation of this order as for the interpretation of an Act of Parliament

3 (1) As from the appointed day, the Government of India Act, 1935, including the provisions of that Act which have not come into force before the appointed day, and the India (Central Government and Legislature) Act, 1946, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of India, apply to India with the omissions, additions, adaptations and modifications directed in the following provisions of this paragraph and in the Schedule\* to this Order

(2) The following expressions shall be omitted wherever they occur, namely, "in his discretion", "acting in his discretion" and "exercising his individual judgment"

(3) For each expression specified in the first column of the following Table, wherever that expression occurs, there shall be substituted the expression specified in the corresponding entry in the second column of the Table

TABLE

existing Indian law	existing law
existing Indian Act	existing law
Federation	Dominion
Federal Government	Dominion Government
Federal law	Dominion law
Federal Legislature	Dominion Legislature
Federated	Acceding
a Federated	an Acceding

4 Where the Schedule† to this Order requires that in any specified provision certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall, unless otherwise expressly provided, be made wherever the words referred to appear in that provision

5 Where any instrument is in force under any provision of the Government of India Act, 1935, imme-

† not Printed

\* Schedule not printed The adaptations made in the Schedule have all been incorporated in the Government of India Act, 1935 and the India (Central Govt and Legislature) Act, 1946, as given in Part II

diately before the appointed day, and that provision remains in force, whether with or without modifications, on and after the appointed day, the said instrument shall, so far as applicable and with any necessary modifications, remain in force as from that day as if it were an instrument of the appropriate kind duly made by the appropriate authority under the said provision as in force after that day, and may be varied or revoked accordingly

6 Where any law made by the Governor of a Province by virtue of section 93 of the Government of India Act, 1935, is in force immediately before the appointed day, the said law, notwithstanding that the said section is directed to be omitted in the Schedule\* to this Order or that by reason of such omission a Proclamation under the said section ceases to have effect, shall remain in force for the period for which it would have remained in force if the said section had been at all material times in operation

7 (1) Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is holding any civil post under the Crown in connection with the affairs of the Governor General or Governor-General in Council or of a Province other than Bengal or the Punjab shall, as from that day, be deemed to have been duly appointed to the corresponding post under the Crown in connection with the affairs of the Dominion of India or, as the case may be, of the Province

(2) Notwithstanding that section 170 of the Government of India Act, 1935, is directed to be omitted in the Schedule to this Order, the person holding the office of the Auditor of Indian Home Accounts immediately before the appointed day is hereby authorised to continue, until such date as the Governor-General may specify, to perform such duties, and exercise such powers in relation to transactions in the United Kingdom affecting the revenues of India or of any Province thereof as he was before the appointed day performing or exercising under the provisions of the said section 170

### **The India (Provincial Legislatures) Order, 1947.**

*The 11th August, 1947*

In exercise of the powers conferred by section 9 of "the Indian Independence Act, 1947, and of all other powers

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\* Schedule not printed



enabling him in that behalf, the Governor-General is pleased to make the following Order—

1 (1) This Order may be cited as the India (Provincial Legislatures) Order, 1947

(2) It shall come into force at once

2 (1) In this Order,—

“appointed day” means the fifteenth day of August, 1947,

“sitting member”, in relation to a Provincial Legislative Assembly or Provincial Legislative Council, means a person who at the commencement of this Order is a member of that Assembly or as the case may be of that Council,

“East Punjab constituency” means a constituency specified in the Sixth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936, as adapted by Article 3 of this Order,

“Punjab constituency” means a constituency specified in the Sixth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936, as in force at the commencement of this Order,

“West Bengal constituency” means a constituency specified in the Fourth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936, as adapted by Article 3 of this Order

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 As from the appointed day, the Government of India (Provincial Legislative Assemblies) Order, 1936, the Government of India (Provincial Legislative Councils) Order, 1936, the Government of India (Scheduled Castes) Order, 1936, and the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of India or, in relation to any Provincial Legislature by or in accordance with an Act of that Legislature, apply to the Dominion of India—

(a) With the omission of the expression “exercising his individual judgment” and of the expression “in his discretion” wherever they occur in the said Orders, and

(b) With the omissions, additions, adaptations, and modifications directed in the Schedule to this Order

4 (1) As from the appointed day, every sitting member of the Bengal Legislative Assembly representing a constituency which immediately before that day bears the same name as a West Bengal constituency shall, notwithstanding any alteration in the extent of that constituency, be deemed to have been elected by that constituency to the Legislative Assembly of West Bengal

Provided that no sitting member of the Bengal Legislative Assembly representing the Bengal Chamber of Commerce constituency shall be deemed to have been elected by that constituency to the Legislative Assembly of West Bengal

(2) As from the appointed day, the sitting member of the Bengal Legislative Assembly representing the Calcutta University constituency shall be deemed to have been elected by the University constituency to the Legislative Assembly of West Bengal

(3) Elections shall be held as soon after the appointed day as may be practicable to choose the members of the Legislative Assembly of West Bengal representing —

(a) the Bengal Chamber of Commerce constituency, and

(b) the Calcutta Trades Association, Indian Jute Mills Association, Indian Tea Association and Indian Mining Association constituency

(4) Unless the person who under the provisions of paragraph (1) of this Article is deemed to have been elected by the Railway Trade Union constituency or the Water Transport Trade Union constituency previously resigns his seat in the Legislative Assembly of East Bengal, he shall cease to be a member of the Legislative Assembly of West Bengal on the first day of September 1947, and his seat in that Assembly shall become vacant on that day

5 (1) As from the appointed day, every sitting member of the Punjab Legislative Assembly representing a constituency which immediately before that day bears the same name as an East Punjab constituency shall, notwithstanding any alteration in the extent of that consti-

tuency, be deemed to have been elected by that constituency to the Legislative Assembly of East Punjab

(2) The sitting members of the Punjab Legislative Assembly representing the Punjab constituencies specified in the first column of the following Table shall as from the appointed day be deemed to have been elected by the East Punjab constituency specified in the corresponding entry in the second column of the Table

TABLE

<i>The Punjab Constituency</i>	<i>East Punjab Constituency</i>
Punjab Commerce and Industry	East Punjab Commerce and Industry
East Punjab Landholders	Ambala Division Landholders
Central Punjab Landholders	Jullundur Division <i>cum</i> Amritsar District Landholders

(3) The sitting member of the Punjab Legislative Assembly representing the general rural constituency of Amritsar and Sialkot and filling the seat not reserved for members of the scheduled castes shall as from the appointed day be deemed to have been elected by the general rural constituency of Amritsar to the Legislative Assembly of East Punjab

(4) Unless the person who under the preceding provisions of this Article is deemed to have been elected by the East Punjab Commerce and Industry constituency or the Railway Trade Union constituency or the University constituency previously resigns his seat in the Legislative Assembly of West Punjab, he shall cease to be a member of the Legislative Assembly of East Punjab on the first day of September, 1947, and his seat in that Assembly shall become vacant on that day

6 (1) Every sitting member of the Assam Legislative Assembly representing a constituency whose name is not included in the Ninth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936 as adapted by Article 3 of this Order shall on the appointed day cease to be a member of the Assam Legislative Assembly

(2) All sitting members of the Assam Legislative Assembly representing the European Planting constituency shall on the appointed day cease to be members of that Assembly, and a by-election shall be held for the election

of one member to represent that constituency

(3) As from the appointed day the sitting member of the Assam Legislative Assembly representing the Indian Planting (Assam Valley) constituency shall notwithstanding the alteration in the extent of that constituency, be deemed to have been elected by that constituency

(4) On the appointed day the Assam Legislative Council shall cease to exist

7 The sitting members of the Legislative Assemblies and Legislative Councils of Madras, Bombay, the United Provinces and Bihar representing European constituencies and the sitting member of the Legislative Assembly of the Central Provinces and Berar representing the European constituency shall on the appointed day cease to be members of the said Assemblies or Councils as the case may be

**The India (Adaptation of Existing Indian Laws)  
Order, 1947**

*The 14th August, 1947*

Whereas sub-section (3) of section 18 of the Indian Independence Act, 1947 (hereafter in the recitals to this Order referred to as 'the said Act') provides that save as otherwise expressly provided in this said Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof, until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf,

And whereas sub-section (1) of section 9 of the said Act provides that the Governor-General shall by order make such provision as appears to him to be necessary or expedient for bringing the provisions of the said Act into effective operation and for removing difficulties arising in connection with the transition to the provisions of the said Act,

Now therefore in exercise of the powers conferred by the said Act, the Governor-General is pleased to make the following Order —

1 (1) This Order may be cited as the India (Adaptation of Existing Indian Laws) Order, 1947.

(2) It shall come into force on the fifteenth day of August, 1947

2 (1) In this Order—

“appointed day” means the fifteenth August, 1947

“existing Indian law” means any Act, Ordinance, Regulation, rule, order or bye-law which immediately before the appointed day has the force of law in the whole or any part of the territories which as from that day form the territories of the Dominion of India, but does not include any Act of Parliament, or any Order in Council, rule or other instrument made under an Act of Parliament, or the General clauses Act, 1897

(2) The General Clauses Act, 1897, applies for the interpretation of this Order as it applies for the interpretation of a Central Act

3 As from the appointed day, all existing Indian laws shall until repealed or altered or amended by a competent Legislature or other competent authority, in their application to the Dominion of India and any part or parts thereof, be subject to the adaptations directed in this Order

4 (1) Where an existing Indian law contains a provision defining the territories to which the law extends, or a provision referring to the territories which are within the scope of that provision, that provision shall be so adapted as to exclude any territories which on the appointed day are not to form part of the territories of the Dominion of India

(2) Without prejudice to the general effect of the preceding paragraph, references in any existing Indian law to “the whole of British India” (or “British India”), to “Bengal” and to “the Punjab” shall, except where the reference occurs in a title or preamble or any citation or description of an Act, Ordinance or Regulation and except where the context otherwise requires, be replaced by references to “all the Provinces of India”, to “West Bengal” and to “East Punjab”, respectively

5 Any reference in an existing Indian law to a High Court which as from the appointed day ceases to be a High Court for any part of the Dominion of India shall—

- (a) if the reference be to the High Court of Judicature at Lahore, be replaced by a reference to the High Court of East Punjab, and
- (b) in any other case, be omitted

6 Any words in an existing Indian law signifying that the Governor-General or Governor is to act in his discretion or to exercise his individual judgment shall be omitted

7 Any reference in an existing Indian law to the exercise of the functions of the Crown in its relation with Indian States (including any provision the operation of which depends on the exercise of such functions) shall be omitted, and references in any such law to the Crown Representative shall be omitted or construed as references to the Central Government as the context may require

8 Any reference in an existing Indian law to the Indian Legislature or to a Chamber or the Chambers thereof shall be construed as a reference to the Central Legislature

9 (1) Any tribunal, authority, officer or official body constituted or appointed before the commencement of this Order under an existing Indian law for, or with jurisdiction over, the whole of India or the whole of British India shall, as from the appointed day, be deemed to have been constituted or appointed for, or with jurisdiction over, the whole of the Dominion of India, and any reference in an existing Indian law to any such tribunal, authority office or official body as aforesaid shall be construed accordingly

2 Any reference in an existing Indian law to a tribunal, authority, officer or official body whose jurisdiction or authority immediately before the appointed day extends—

- (a) to the whole of the Province of Bengal or over parts of that Province which on the said day fall partly within the Province of East Bengal and partly within the Province of West Bengal, or
- (b) to the whole of the Province of the Punjab or over parts of that Province which on the said day fall partly within the Province of East Punjab and partly within the Province of West Punjab, or
- (c) to the whole of the Province of Assam or over parts of that Province which on the said day

fall partly within the Province of Assam and partly within the Province of East Bengal, shall be construed as references to such tribunal, authority, officer or the official body as the appropriate Government may by notification in the official Gazette constitute or appoint in that behalf, and any such direction may be given so as to have effect from the appointed day

Provided that nothing in this paragraph shall apply to any tribunal, authority, officer or official body to which or to whom the provisions of paragraph (1) of this Article apply

3 For the purpose of sub-paragraph (2) the expression "appropriate Government" means, as respects a law relating to a matter enumerated in List I of the Seventh Schedule to the Governments of India Act, 1935, the Central Government, and as respects any other law, the Provincial Government of West Bengal East Punjab or Assam, as the case may be

10 Any court, tribunal or authority required or empowered to enforce an existing Indian law shall, notwithstanding that this Order makes no provision or insufficient provision for the adaptation of the law for the purpose of rendering it consistent with the provisions of the Indian Independence Act, 1947, and of the Government of India Act, 1935, as applicable to the Dominion of India, construe the law with all such adaptations as are necessary for the said purpose

Provided that if any question arises regarding the adaptations with which such law should be construed for the said purpose, the question shall be referred to the Central Government if the law relates to a matter enumerated in List I or List III in the Seventh Schedule to the Government of India Act, 1935, and to the Provincial Government in any other case, and the decision of that Government on any such reference shall be final

11 The General Clauses Act, 1897, shall in its application to the Dominion of India, until repealed or altered or amended by the Central Legislature, be subject to the adaptations specified in the Schedule to this Order

12 The provisions of this Order shall not render invalid anything duly done before the appointed day under an existing Indian law, and anything so done for British India or for parts thereof including territories thereafter included in the Dominion of India shall, as from the appointed day and until altered, varied or undone, have effect

as if it had been done after the appointed day for the whole of the Dominion of India or as the case may be, for such territories thereof as aforesaid, by a competent authority and under and in accordance with the provisions then applicable to the case

13 If by order under section 9 of the Indian Independence Act, 1947, provision is made for authorising the continued carrying on for the time being on behalf of the new Dominions or on behalf of any two or more of the Provinces therein referred to as the said new Provinces of services or activities previously carried on under the authority of an existing Indian law on behalf of British India as a whole or on behalf of the former Provinces which those new Provinces represent, then, notwithstanding anything herein contained, such law shall, as from the appointed day, or where the order under the said section 9 is made after the appointed day, as from the date of the making of the order, have effect in its application to the Dominion of India according to the tenor of that order

### THE SCHEDULE

*(See Article II)*

#### **Adaptations of the General Clauses Act, 1897, in its application to the Dominion of India**

**Section 3**—In clause (7), after "any period after that date" insert "and before the date of the establishment of the Dominion of India"

In clause (8aa), omit "or section 44 of the Government of India Act, 1935"

For clause (8ab) substitute —

"(8ab) "Central Government" shall—

(a) in relation to anything done before the commencement of Part III of the Government of India Act 1935, mean the Governor-General in Council or the authority competent at the relevant date to exercise the functions corresponding to those subsequently exercised by the Government-General

(b) in relation to anything done after the commencement of Part III of the said Act, but before the establishment of the Dominion of India, mean, as respects matters with respect to which the Governor-General was by or under the provisions of the said Act then in force required to act in his discretion, the Governor-General, and as respects other matters, the Governor-General in Council and



(c) in relation to anything done or to be done after the establishment of the Dominion of India, mean the Governor-General, and shall include—

- (i) in relation to functions entrusted under subsection (1) of section 124 of the said Act to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that subsection, and
- (ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under subsection (3) of section 94 of the said Act "

In clause (8ac), for "Federal" substitute "Dominion"

In clause (9a) for "the Punjab" substitute "East Punjab"

For clause (11), substitute —

"(11) 'Colony'—

(a) in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, shall mean any part of His Majesty's dominions exclusive of the British Islands, the Dominions of India and Pakistan (and before the establishment of those Dominions British India), any Dominion as defined in the Statute of Westminster, 1931 any Province or State forming part of any said Dominions, and British Burma, and

(b) in any Central Act passed before the commencement of Part III of the said Act, mean any part of His Majesty's dominions exclusive of the British Islands and of British India,

and in either case where parts of those dominions are under both a central and local legislature, all parts under the Central legislature shall, for the purposes of this definition be deemed to be one colony

In clause (14a), omit "contracts made by the Federal Railway Authority" and for "made in connection" substitute "made before the fifteenth day of August, 1947 in connection"

In clauses (14b), (14c) and (14d), omit "the Federal Railway Authority"

In clause (14e), for "the Federal Railway Authority or the Crown Representative" substitute "and with reference to a state of affairs existing after the commencement of Part III of the Government of India Act, 1935,

of any other Province, be continued by or against that Province

13 (1) Where by virtue of the preceding provisions of this Order either of the Dominions or any Province becomes entitled to any property or obtains any other benefits, and it is just and equitable that property or those benefits, should be transferred or shared with the other Dominion, or with any other Province, as the case may be, the said property or benefits shall be allocated in such manner as, in default of agreement, may be determined by the Arbitral Tribunal

(2) Where by virtue of the preceding provisions of this Order either of the Dominions or any province becomes subject to any liability, and it is just and equitable that a contribution towards that liability should be made by the other Dominion, or by another Province, as the case may be, the other Dominion or Province shall make to the Dominion or Province primarily subject to the liability such contribution in respect thereof as, in default of an agreement, may be determined by the Arbitral Tribunal

(3) In determining what is just and equitable for the purposes of this Article the parties concerned and the Arbitral Tribunal shall be guided by the principles laid down in any relevant decision of any of the bodies referred to in paragraph (2) of Article 4 of the Arbitral Tribunal Order, 1947

### **The Indian Naval Forces ( Temporary Governance ) Order, 1947**

*The 14th August 1947*

Whereas sub-section (1) of section 11 of the Indian Independence Act, 1947, provides that the orders to be made by the Governor-General under the preceding provisions of that Act shall make provision for the command and governance of the Indian armed forces of His Majesty until the division of the said forces between the New Dominions is completed

Now therefore, in exercise of the powers conferred by the said Act the Governor-General is pleased to make the following Order to provide for the command and governance of the Indian Naval Forces of His Majesty until the division thereof is completed —

1 (1) This Order may be called the Indian Naval Forces (Temporary, Governance) Order 1947

or not acting in his discretion, and exercising or not exercising is individual judgment, according to the provision in that behalf made by and under the said Act, and in a Chief Commissioner's Province, the Central Government, and

(c) as respects anything done before the commencement of Part III of the said Act, shall mean the authority or person authorised at the relevant date to administer executive government in the Province in question "

In clause (45), for "British India" substitute "a Province"

After clause (56) insert —

" 'West Bengal Act' shall mean an Act made by the Provincial Legislature of West Bengal under the Government of India Act, 1935"

**Section 4-A**—In sub-section (1), omit "Federal Government" "Federal Railway Authority"

**Section 5**—In sub-section (2), omit "or under section 32 of the Government of India Act, 1935"

Omit section 5A

**Section 30** —Omit "or section 43"

### **The Indian Independence (International Arrangements) Order, 1947**

*The 14th August, 1947.*

Whereas the agreement set out in the Schedule to this Order has been reached at a meeting of the Partition Council on the 6th day of August, 1947 ,

And, whereas it is intended that as from the 15th day of August, 1947, the said agreement shall have the force and effect of an agreement between the Dominions of India and Pakistan ,

Now therefore in exercise of the powers conferred upon him by section 9 of the Indian Independence Act, 1947 and of all other powers enabling him in that behalf, the Governor-General hereby orders as follows —

1 This Order may be cited as the Indian Independence (International Arrangements) Order, 1947

2 The agreement set out in the Schedule to this Order shall, as from the appointed day, have the effect of an agreement duly made between the Dominion of India and the Dominion of Pakistan

# SCHEDULE

## *Agreement as to the devolution of International rights and obligations upon the Dominions of India and Pakistan*

1. The international rights and obligations to which India is entitled and subject immediately before the 15th day of August, 1947, will devolve in accordance with the provisions of this agreement

2 (1) Membership of all international organisations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India

For the purposes of this paragraph any rights or obligations arising under the Final Act of the United Nations Monetary and Financial Conference will be deemed to be rights or obligations attached to membership of the International Monetary Fund and to membership of the International Bank for Reconstruction and Development

(2) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organisations as it chooses to join

3 (1) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of India will devolve upon that Dominion

(2) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of Pakistan will devolve upon that Dominion

4 Subject to Articles 2 and 3 of this agreement, rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of India and upon the Dominion of Pakistan, and will if necessary, be apportioned between the two Dominions,

## **The Indian Independence (Rights, Property and Liabilities) Order, 1947**

*The 14th August, 1947*

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order—

1 (1) This Order may be cited as the Indian Independence (Rights, Property and Liabilities) Order, 1947

(2) It shall come into force at once

2 (1) In this Order,—

‘appointed day’ means the fifteenth day of August, 1947,

“Arbitral Tribunal” means the Arbitral Tribunal constituted in accordance with the Arbitral Tribunal Order, 1947,

“land” includes immovable property of every kind, and any rights in or over such property

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an act of Parliament

3 (1) The provisions of this Order relate to the initial distribution of rights, property and liabilities consequential on the setting up of the Dominions of India and Pakistan, and shall have effect subject to any agreement between the two Dominions or the Provinces concerned and to any award that may be made by the Arbitral Tribunal

(2) Nothing in this Order affects the powers of control over military plant, machinery, equipment and stores conferred on the Joint Defence Council by the Joint Defence Council Order, 1947

(3) The powers of control over property conferred upon each of the Dominions by this Order shall include all the powers of use, consumption, management and disposition incidental to ownership, but each Dominion shall exercise the said powers with due regard to the interests of both Dominions, and shall carry out the terms of any agreement or award under which the property is to be transferred to the other Dominion

4 All land which immediately before the appointed day is vested in His Majesty for the purposes of the Governor-General in Council shall on that day,—

(a) in the case of land situated in India or in the tribal areas on the borders of India, be under the control of the Dominion of India,

(b) in the case of land situated in Pakistan, or in the tribal areas on the borders of Pakistan, be under the control of the Dominion of Pakistan,

- (c) in the case of land which immediately before the appointed day is used for the purposes of any official representative of the Government of India in any other part of His Majesty's Dominion or in a foreign country, be under the control of the Dominion of India, and
- (d) in any other case, be under the joint control of the Dominion of India and Pakistan

Provided that any land which, by virtue of the preceding provisions of this Article, is to be under the control of the two Dominions, and which is situated in an Indian State, shall, if within one month from the appointed day the State accedes to either of the two Dominions, be under the control of that Dominion as from the date on which the accession of the State becomes effective

5 (1) All land which immediately before the appointed day is vested in His Majesty for the purposes of the Province of Bengal shall on that day—

- (a) in the case of land situated in the Province of East Bengal, vest in His Majesty for the purposes of that Province,
- (b) in the case of land situated in the Province of West Bengal, vest in His Majesty for the purposes of that Province, and
- (c) in any other case, vest in His Majesty for the joint purposes of those two Provinces

(2) All land which immediately before the appointed day is vested in His Majesty for the purposes of the Province of the Punjab shall, on that day—

- (a) in the case of land situated in the Province of West Punjab, vest in His Majesty for the purposes of that Province,
- (b) in the case of land situated in the Province of East Punjab, vest in His Majesty for the purposes of that Province, and
- (c) in any other case, vest in His Majesty for the joint purposes of those two Provinces

(3) All land which immediately before the appointed day is vested in His Majesty for the purposes of the Province of Assam shall—

- (a) in the case of land situated in that part of the Province which on that day becomes part of the Province of East Bengal, vest on that day

in His Majesty for the purposes of the Province of East Bengal, and

- (b) in any other case, continue to be vested in His Majesty for the purposes of the Province of Assam

(4) All land which immediately before the appointed day is vested in His Majesty for the purposes of any province other than Bengal the Punjab or Assam shall continue to be vested in His Majesty for the purposes of that Province

6 The Provisions of Articles 4 and 5 of this Order shall apply in relation to all goods, coins, bank notes and currency notes which immediately before the appointed day are vested in His Majesty for the purposes of the Governor-General in Council or of a Province as they apply in relation to land so vested

7 (1) Subject to the provisions of this Order relating to certain contractual rights, this Article shall apply to all property, other than land, goods, coins, bank notes and currency notes, which immediately before the appointed day is vested in His Majesty for the purposes of the Governor-General in Council or of a Province

(2) All such property shall on the appointed day vest in His Majesty for the joint purposes of the two Dominions, for the joint purposes of the Provinces of East Bengal and West Bengal, or for the joint purposes of the Provinces of East Punjab and West Punjab, or shall, as from that day, continue to be vested in His Majesty for the purposes of the Province, according as the purposes for which the property is held immediately before the appointed day are—

- (a) purposes of the Governor-General in Council
- (b) purposes of the Province of Bengal,
- (c) purposes of the Province of the Punjab, or
- (d) purposes of a Province other than Bengal or the Punjab

8 (1) Any contract made on behalf of the Governor-General in Council before the appointed day shall, as from that day,—

- (a) if the contract is for purposes which as from that day are exclusively purposes of the Dominion of Pakistan, be deemed to have been made on behalf of the Dominion of Pakistan instead of the Governor-General in Council and

- (b) in any other case, be deemed to have been made on behalf of the Dominion of India instead of the Governor-General in Council,

and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the Dominion of Pakistan or the Dominion of India, as the case may be

(2) Any contract made on behalf of the Province of Bengal before the appointed day shall, as from that day,—

- (a) if the contract is for purposes which as from that day are exclusively purposes of the Province of West Bengal, be deemed to have been made on behalf of that Province instead of the Province of Bengal, and

- (b) in any other case be deemed to have been made on behalf of the Province of East Bengal instead of the Province of Bengal

and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the Province of Bengal be rights or liabilities of the Province of West Bengal or the Province of East Bengal, as the case may be

(3) Any contract made on behalf of the Province of the Punjab before the appointed day shall, as from that day,—

- (a) if the contract is for purposes which as from that day are exclusively purposes of the Province of East Punjab, be deemed to have been made on behalf of that Province instead of the Province of the Punjab and

- (b) in any other case be deemed to have been made on behalf of the Province of West Punjab instead of the Province of the Punjab

and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights or liabilities of the Province of the Punjab, be rights or liabilities of the Province of East Punjab or the Province of West Punjab, as the case may be

(4) Any contract made before the appointed day on behalf of the Province of Assam, being a contract for purposes which, as from that day, are exclusively purposes



of the Province of East Bengal, shall, as from that day be deemed to have been made on behalf of the Province of East Bengal instead of the Province of Assam, and all rights and liabilities which have accrued or may accrue under the contract shall, to the extent to which they would have been rights or liabilities of the Province of Assam, be rights or liabilities of the Province of East Punjab

(5) For the purposes of this Article there shall be deemed to be included in the liabilities which have accrued or may accrue under any contract,—

- (a) any liability to satisfy an order or award made by any, court or other tribunal in proceedings relating to the contract, and
- (b) any liability in respect of expenses incurred in or in connection with any such proceedings

(6) The provisions of this Article shall have effect subject to the provisions of Article 9 of this Order, and bank balances and securities shall, notwithstanding that they partake of the nature of contractual rights, be dealt with as property to which Article 7 of this Order applies

8 All liabilities in respect of such loans, guarantees and other financial obligations of the Governor-General in Council or of a Province as are outstanding immediately before the appointed day shall, as from that day,—

- (a) in the case of liabilities of the Governor-General in Council, be liabilities of the Dominion of India,
- (b) in the case of liabilities of the Province of Bengal be liabilities of the Province of East Bengal,
- (c) in the case of liabilities of the Province of the Punjab, be liabilities of the Province of West Punjab, and
- (d) in the case of liabilities of any Province other than Bengal, or the Punjab, continue to be liabilities of that Province

10 (1) Where immediately before the appointed day the Governor-General in Council is subject to any liability in respect of an actionable wrong other than breach of contract, that liability shall,—

- a) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Dominion of India be a liability of that Dominion,

(b) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Dominion of Pakistan, be a liability of that Dominion, and

(c) in any other case be a joint liability of the Dominions of India and Pakistan

(2) Where immediately before the appointed day the Province of Bengal is subject to any such liability as aforesaid, that liability shall,

(a) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of East Bengal, be a liability of that Province,

(b) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of West Bengal, be a liability of that Province, and

(c) in any other case, be a joint liability of the Provinces of East and West Bengal

Where immediately before the appointed day, the Province of the Punjab is subject to any such liability as aforesaid, that liability shall

(a) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of West Punjab, be a liability of that Province,

(b) where the cause of action arose wholly within territories which as from that day, are the territories which, as from that day, are the territories of the Province of East Punjab, be a liability of that Province, and

(c) in any other case, be a joint liability of the Provinces of East and West Punjab

(4) Where immediately before the appointed day the Province of Assam is subject to any such liability as aforesaid, then, if the cause of action arose wholly within the territories which, as from that day, are the territories of East Bengal, the liability shall, as from that day, be a liability of the Province of East Bengal

11 (1) Nothing in the preceding provision of this Order affects the liability of either Dominion or of any Province in respect of the payment of any pension

(2) Where before the appointed day the Governor

General in Council or any Province is subject to any liability in respect of any pension, that liability shall as from the appointed,—

- (a) in the case of a liability of the Governor-General in Council, be a liability of the Dominion of India,
- (b) in the case of liability of the Province of Bengal, be a liability of the Province of East Bengal,
- (c) in the case of a liability of the Province of the Punjab, be a liability of the Province of West Punjab, and
- (d) in the case of a liability of any Province other than Bengal or the Punjab, continue to be a liability of that Province

12 (1) Where immediately before the appointed the Governor-General in Council is a party to any legal proceedings with respect to any property rights or liabilities transferred by this Order, the Dominion which succeeds to the property, rights or liabilities in accordance with the provisions of this Order shall be deemed to be substituted for the Governor-General in Council as a party to the proceedings may continue accordingly.

(2) Where any Province from which property, rights or liabilities are transferred by this Order is, immediately before the transfer, a party to legal proceedings with respect to that property or those rights or liabilities the Province which succeeds to the property, rights or liabilities of this Order shall be deemed to be substituted for the other Province as a party to those proceedings, and the proceedings may continue accordingly

(3) Any proceedings which, immediately before the appointed day, are pending by or against the Secretary of State elsewhere than in the United Kingdom in respect of any liability of the Governor-General in Council or a Province shall,—

- (a) in the case of proceedings in respect of a liability the Governor-General in Council be continued by or against the Dominion which succeeds to the liability,
- (b) in the case of proceedings in respect of a liability of the Province of Bengal, the Province of the Punjab, or the Province of Assam, be continued by or against the Province which succeeds to the liability, or
- (c) in the case of proceedings in respect of a liability

of any other Province, be continued by or against that Province

13 (1) Where by virtue of the preceding provisions of this Order either of the Dominions or any Province becomes entitled to any property or obtains any other benefits, and it is just and equitable that property or those benefits, should be transferred or shared with the other Dominion, or with any other Province, as the case may be, the said property or benefits shall be allocated in such manner as, in default of agreement, may be determined by the Arbitral Tribunal

(2) Where by virtue of the preceding provisions of this Order either of the Dominions or any Province becomes subject to any liability, and it is just and equitable that a contribution towards that liability should be made by the other Dominion, or by another Province, as the case may be, the other Dominion or Province shall make to the Dominion or Province primarily subject to the liability such contribution in respect thereof as, in default of an agreement, may be determined by the Arbitral Tribunal

(3) In determining what is just and equitable for the purposes of this Article the parties concerned and the Arbitral Tribunal shall be guided by the principles laid down in any relevant decision of any of the bodies referred to in paragraph (2) of Article 4 of the Arbitral Tribunal Order, 1947

### **The Indian Naval Forces (Temporary Governance) Order, 1947**

*The 14th August 1947*

Whereas sub-section (1) of section 11 of the Indian Independence Act, 1947, provides that the orders to be made by the Governor-General under the preceding provisions of that Act shall make provision for the command and governance of the Indian armed forces of His Majesty until the division of the said forces between the New Dominions is completed

Now therefore, in exercise of the powers conferred by the said Act the Governor-General is pleased to make the following Order to provide for the command and governance of the Indian Naval Forces of His Majesty until the division thereof is completed —

1 (1) This Order may be called the Indian Naval Forces (Temporary, Governance) Order 1947

(2) It shall come into force on the fifteenth day of August 1947 (hereinafter referred to as the appointed day) and shall remain in force up to the thirty-first day of March 1948, or such earlier or later date as the Joint Defence Council may by notification in the *Gazette of India* and the *Gazette of Pakistan* specify in this behalf

2 In this Order—

(1) the expression 'Indian naval forces' includes all His Majesty's naval forces existing before the appointed day and also the naval forces of India and the naval forces of Pakistan,

(2) 'India' means the Dominion of India,

(3) 'Pakistan' means the Dominion of Pakistan

(4) 'the said Act' means the Naval Discipline Act as set out in the First Schedule to the Indian Navy (Discipline) Act 1934

3 Notwithstanding anything contained in regulation (2) of section 58 of the said Act as in force as a law of India and as in force as a law of Pakistan, an officer on full pay of a rank specified in the said regulation shall be qualified to sit as a member of any court martial held in pursuance of the said Act as so in force if—

(a) he belongs to the regular naval forces of India, or

(b) he belongs to the regular naval forces of Pakistan or

(c) he belongs to His Majesty's regular naval forces other than Indian naval forces and is attached to or serving with the regular naval forces of India or of Pakistan

4 Regulation (7) of section 58 of the said Act as in force as a law of India and as in force as a law of Pakistan shall have effect as if for the word 'captain' there were substituted the words 'substantive or acting commander'

5 Notwithstanding anything contained in regulation (9) of section 58 of the said Act as in force as a law of India and as in force as a law of Pakistan the officer to whom the Central Government of India or of Pakistan is empowered to grant commissions authorising him to order courts-martial to be held for the trial of offences under the said Act as so in force may be—

(a) an officer belonging to the regular naval forces of India, or

- (b) an officer belonging to the regular naval forces of Pakistan, or
- (c) an officer belonging to His Majesty's regular naval forces other than Indian naval forces who is attached to or serving with the regular forces of India or of Pakistan

6 A person in or belonging to the naval forces of India who is serving in a ship or naval establishment belonging to the naval forces of Pakistan or who is on board any such ship or any such establishment awaiting passage or conveyance to any destination shall for all purposes of command and discipline be subject to the laws and customs for the time being applicable to ships and naval forces of Pakistan

7 A person in or belonging to the naval forces of Pakistan who is serving in a ship or naval establishment belonging to the naval forces of India or who is on board any such ship or any such establishment awaiting passage or conveyance to any destination shall for all purposes of command and discipline be subject to the laws and customs for the time being applicable to ships and naval forces of India

8 Officers and men of non-Asiatic domicile who immediately before the appointed day belonged to the Royal Indian Navy or its reserves shall, whether or not they have volunteered for further service with the naval forces of India or of Pakistan, be borne on the books of a Royal naval ship and while so borne shall be subject to the laws and customs for the time being applicable to the Royal Navy until they are finally discharged

9 Officers and men of Asiatic domicile who immediately before the appointed day belonged to the Royal Indian Navy or its reserves and who have not volunteered to serve in the naval forces of India or of Pakistan shall until they are duly discharged from service, be borne on the books of the ship in which they were serving immediately before the appointed day and shall be subject for all purposes of command and discipline to the laws and customs for the time being applicable to the Navy to which such ships belong

#### **The India Provisional Constitution and Provincial Legislatures (Amendment) Order, 1947**

[A Government of India Notification dated the 7th September 1947 was as follows — Certain provisions of the Order are consequential upon the awards of the Bengal and Punjab Boundary Commissions which were announced in the Gazette of India Extraordinary dated the 17th August, 1947. The Government of India wish to make it clear that they consider the awards to be unsatisfactory and unreasonable in

certain parts and it is only because there was an agreement between the parties to the arbitration proceedings to abide by the decisions of the Boundary Commissions that they propose for the present to accept the boundaries determined by them. They intend, however, to seek to modify the terms of the awards by such methods as may be found suitable ]

WHEREAS in the exercise of the powers conferred by section 9 of the Indian Independence Act 1947, the Governor-General was pleased to make the India (Provisional Constitution) Order, 1947 and the India (Provincial Legislatures) Order, 1947,

AND WHEREAS sub-section (5) of section 19 of the said Act provides that any power conferred by that Act to make any order includes power to revoke or vary any order previously made in the exercise of that power,

AND WHEREAS sub-section (3) of section 9 of the said Act provides that any order made under that section may be made so as to be retrospective to any date not earlier than the third day of June 1947,

AND WHEREAS in consequence of the awards of the Boundary Commissions referred to in sections 3 and 4 of the said Act it is necessary to amend the provisions of the India (Provisional Constitution) Order, 1947, and of the India (Provincial Legislatures) Order 1947, in certain respects

NOW THEREFORE in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order —

1 This Order may be cited as the India Provisional Constitution and Provincial Legislatures (Amendment) Order, 1947

2 In the list of adaptations pertaining to the Fifth Schedule to the Government of India Act, 1935, as set out in the Schedule to the India (Provisional Constitution) Order 1947, the table with the heading "Table of Seats, Provincial Legislative Assembly" shall be amended as follows —

- (a) for the entries in columns 2, 3 and 7 against West Bengal the entries "90", "44" and "21" shall respectively be substituted,
- (b) for the entries in columns 2, 3, 6 and 7 against East Punjab the entries "81", "31", "20" and "23" shall respectively be substituted,
- (c) for the entries in columns 2, 3, 4 and 7 against Assam,

the entries "71" "37" "5" and "16" shall respectively be substituted

3 In Article 2 of the India (Provincial Legislatures) Order 1947, in paragraph (1) the following definition shall be added —

'Bengal constituency' means a constituency specified in the Fourth Schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936, as in force at the commencement of this Order

4 In Article 4 of the India (Provincial Legislatures) Order 1947 —

(a) in the proviso to paragraph (1), after the words "Commerce constituency" the words "or the Presidency Landholders constituency" shall be inserted,

(b) For paragraph (2), the following paragraph shall be substituted—

(2) The sitting members of the Bengal Legislative Assembly representing the Bengal constituencies specified in the first column of the following Table shall as from the appointed day be deemed to have been elected by the West Bengal constituency specified in the corresponding entry in the second column of the Table

TABLE

Bengal Constituency	West Bengal Constituency
(*) <i>General Urban</i> Presidency Division Municipal	(i) <i>General Urban</i> Northern District Municipal
(ii) <i>Muhammadian Rural</i> Nadia West Dinajpur Central West Malda North	(ii) <i>Muhammadian Rural</i> Navadwip West Dinajpur Malda
(iii) <i>University</i> Calcutta University	(iii) <i>University</i> University

(c) sub-paragraphs (a) and (b) of paragraph (3) shall be re-lettered as sub-paragraphs (d) and (e) respectively, and before the sub-paragraphs as so re-lettered, the following sub-paragraphs shall be inserted,—

"(a) the Navadwip general rural constituency,  
(b) the West Dinajpur-cum-Malda general rural constituency,



- (c) the Presidency Landholders constituency,"  
 (d) in paragraph (4) for the words "first day" the words "fifteenth day" shall be substituted

5 In Article 5 of the India (Provincial Legislatures) Order, 1947,—

- (a) in the table in paragraph (2),—

(i) the words *cum* Amritsar District" shall be omitted, and

(ii) the following entry shall be added —

'Sikh rural constituency  
of Kasur

Sikh rural constituency  
of Patli,

- (b) in paragraph (4), for the words 'first day' the words 'fifteenth day' shall be substituted

6 After Article 7 of the India (Provincial Legislatures) Order, 1947, the following Articles shall be added —

"8 Where in respect of any person who, under the provisions of Article 4 or Article 5 of this Order, is deemed to have been elected to the Legislative Assembly of West Bengal or of East Punjab, as the case may be any enquiry into an election petition was immediately before the appointed day pending under the provisions of the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936 —

- (a) the enquiry shall be continued before such commissioners as may be appointed in this behalf by the Governor of West Bengal or of East Punjab, as the case may be in accordance with the provisions of Part III of the said Order,

Provided that the commissioners may direct that any evidence already recorded shall remain on record, and in that case it shall not be necessary to re-examine those witnesses who have already been examined and discharged,

- (b) if upon the completion of the enquiry and the submission by the commissioners of their report, orders are issued by the Governor declaring the election of the person to be void such person shall cease to be a member of the Legislative Assembly of West Bengal or of East Punjab as the case may be

9 (1) No person shall be a member both of a Provincial

Legislature in India and of a Legislature, whether Central or Provincial, in Pakistan

- (2) If a person who is a member of a Provincial Legislature in India has been, or hereafter is, chosen as a member of a Legislature in Pakistan, then, at the expiration of one month from the appointed day or the date on which he is so chosen, whichever is later, his seat in the Provincial Legislature in India shall become vacant unless he has previously resigned his seat in the Legislature in Pakistan"

7 In the list of adaptations pertaining to the Government of India (Provincial Legislative Assemblies) Order 1936, as set out in the Schedule to the India (Provincial Legislatures) Order 1947 —

(1) the adaptations of sub paragraph (1) of paragraph 15 of Part IV of the Order shall be amended by substituting for the words 'Jalpaiguri and Darjeeling districts' the words 'that portion of the former Rajshahi division which is within the Province of West Bengal',

(2) the Fourth Schedule specifying the West Bengal constituencies shall be amended as follows —

(a) in the table in Part I —

- (i) after the entry relating to the 24 Parganas Municipal constituency insert the following entry —

Northern Districts	The Municipalities of the Navadwip	1
Municipal	Murshidabad Malda West Dinajpur	
	and Jalpaiguri districts	

- (ii) after the entry relating to the 24 Parganas North-

West constituency insert the following entries —

Navadwip	The Navadwip district excluding municipal	1
	areas	
Murshidabad	The Murshidabad district excluding municipal	2
	areas	1
West Dinajpur cum Malda	The West Dinajpur and Malda districts	2
	excluding municipal areas	1

- (iii) omit the entry relating to the Khulna constituency

(b) in the table in Part II —

- (i) after the entry relating to the 24 Parganas North-East constituency insert the following entries —

Navadwip	The Navadwip district	1
Berhampore	The Sadar Sub Division of the Murshidabad	1
	district	

Murshidabad (South West)	The Lalbagh and Kandi sub divisions of the Murshidabad district	1 1
Jangipur	The Jangipur sub-division of the Murshidabad district	1
West Dinajpur	The West Dinajpur district	1
Malda	The Malda district	1"

(ii) omit the entries relating to the Khulna, Satkhira and Bagerhat constituencies

(c) in the table in Part IV omit "(excluding the Chittagong Hill Tracts)",

(d) in the table in Part VI, for "Khulna and 24-Parganas" substitute "24-Parganas and Murshidabad",

(e) in the table in part VIII, omit Chittagong Hill Tracts and"

(3) the Sixth Schedule specifying the East Punjab constituencies shall be amended as follows —

(a) in the table in Part I —

(i) in the entry relating to the Eastern Towns constituency, for "and Tarn Taran" substitute "Tarn Taran, Patti, Batala, Gurdaspur, Pathankot and Dalhousie", for "and Ferozepore" substitute "Ferozepore, Balunand Bakloh" and after, "Civil Lines of Hoshiarpur" insert "and Gurdaspur",

(ii) after the entry relating to the Amritsar constituency, insert the following entry —

Gurdaspur	The Gurdaspur district	1
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(b) in the table in Part II,—

(i) in the entry relating to the Eastern Towns constituency, for "and Tarn Taran" substitute "Tarn Taran, Patti, Batala, Gurdaspur, Pathankot and Dalhousie", for "and Ferozepore" substitute "Ferozepore, Balun and Bakloh" and after "Civil Lines of Hoshiarpur" insert "and Gurdaspur",

(ii) after the entry relating to the Ajnala constituency, insert the following entries —

"Gurdaspur East	The Gurdaspur and Pathankot tahsils of the Gurdaspur district	1
Batala	The Batala tahsil of the Gurdaspur district	1",

(c) in the table in Part III,—

(i) in the entry relating to the Eastern Towns constituency for "and Tarn Taran" substitute "Tarn Taran, Patti, Batala, Gurdaspur, Pathankot and

Dalhousie", for "and Ferozepore" substitute "Ferozepore, Balun and Bakloh" and after "Civil Lines of Hoshiarpur" insert "and Gurdaspur".

- (11) after the entry relating to the Amritsar South constituency, insert the following entries —

Pathi	The Pathi Sub tahsil of the Amritsar district	1
Gurdaspur North	The Gurdaspur and Pathankot tahsils of the Gurdaspur district	1

The Batala tahsil of the Gurdaspur district 1

- (d) in the table in Part VI, omit "*cum* Amritsar District" and "and Amritsar district"

- (e) in the table in Part VII, after the word "Jullundur" insert the word 'Gurdaspur'.

- (4) the Ninth Schedule specifying the Aassm constituencies shall be amended as follows —

- (a) in the table in Part I, after the entry relating to the North Lakhimpur constituency insert the following entry —

Karimganj (East)	Karimganj Pathaikandi Badarpur and Ratabari thanas	2 1
------------------	--	-----

- (b) in the table in Part II after the entry relating to the Lakhimpur constituency insert the following entry, —

"Karimganj (South)	Karimganj Pathaikandi Badarpur and Ratabari thanas	1"
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8 The amendments made by the preceding provisions of this Order in the India (Provisional Constitution) Order, 1947, and the India (Provincial Legislatures) Order, 1947, shall be deemed to have been made on the fifteenth day of August 1947, and shall have effect accordingly

### The Bengal State Prisoners Regulation (Adaptation) Order 1947

*August 26, 1947*

In the exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order —

- 1 (1) This Order may be cited as the Bengal State Prisoners Regulation (Adaptation) Order, 1947

- (2) It shall be deemed to have effect from the fifteenth day of August, 1947 (hereinafter referred to as "the appointed day")

2 As from the appointed day the Bengal State Prisoners Regulation, 1818, shall until repealed or altered or amended by a competent legislature, in its application to the Dominion of India and any part or parts thereof be subject to the following adaptations —

In section I for the words from "reasons of State" to "internal commotion", the words "reasons of State connected with defence external affairs or relations with Acceding States or with the maintenance of public order" shall be substituted

In the third paragraph of section 2 and in sub section (1) of section 7 A for the words "the discharge of the functions of the Crown in its relations with Indian States" the words "relations with Acceding States" shall be substituted

Sub section (4) of section 7 A shall be omitted

In section 12 for the words "and the discharge of the functions of the Crown in its relation with Indian States" the words "or relations with Acceding States" shall be substituted and for the words "Bombay and Sind" the words "and Bombay" shall be substituted

In the Appendix —

for the words "the discharge of the functions of the Crown in its relations with Indian States" wherever they occur the words "relations with Acceding States" shall be substituted,

The words and brackets "(Governor General in Council)" wherever they occur shall be omitted and

the words and brackets *(omit the inappropriate words)* where they occur for the first time shall be omitted

3 The provisions of this Order shall have effect notwithstanding anything to the contrary contained in the India (Adaptation of Existing Indian Laws) Order 1947

### **The Indian Independence (Miscellaneous Transitional Provisions) (No 2) Order, 1947**

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor General is pleased to make the following order —

1 (1) This Order may be cited as the Indian Indepen

**dence (Miscellaneous Transitional Provisions) (No 2) Order 1947**

(2) It shall be deemed to have effect from the fifteenth day of August, 1947

2 In this order,—

‘India’ means the Dominion of India

‘Pakistan’ means the Dominion of Pakistan

‘Transitional period’ means the period beginning on the 15th August, 1947, and ending on the 31st March 1948

3 Any certificate or licence granted during the transitional period by the Government of a Province of Pakistan in accordance with the provisions of Chapter II or Chapter III of the Inland Steamvessels Act 1917 as it applies to Pakistan may be endorsed

(a) by the Government of a Province of India or

(b) with the general or special sanction of the Government of such Province by the authority granting it  
—so as to have effect in such Province or any part thereof and it  
—so endorsed shall have effect accordingly

4 The provisions of this Order shall have effect notwithstanding anything to the contrary contained in the India (Adaptation of Existing Indian Laws) Order 1947

## APPENDIX I

### Form Of Instrument Of Accession

*Instrument of Accession of*

Whereas the Indian Independence Act 1947 provides that as from the fifteenth day of August 1947 there shall be set up an independent Dominion known as India and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modification as the Governor-General may by order specify, be applicable to the Dominion of India

AND WHEREAS the Government of India Act 1935 as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof—

NOW THEREFORE

I . . .

Ruler of . . .  
in the exercise of my sovereignty in and over my said State  
Do hereby execute this my Instrument of Accession and

1 I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession, but subject always to the terms thereof and for the purposes only of the Dominion, exercise in relation to the State of . . . . . (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as the Act')

2 I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession

3 I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State

4 I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly

5 The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument

6 Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India

7 Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution

8 Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State

9 I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors

Given under my hand this . . . . . day of August, Nineteen hundred and forty seven

I do hereby accept this Instrument of Accession

Dated this . . . . . day of August Nineteen hundred and forty seven

(Governor-General of India)

# SCHEDULE.

The matters with respect to which the Dominion Legislature may make laws for this State

## A Defence

1 The naval military and air forces of the Dominion and any other armed force raised or maintained by the Dominion and armed forces, including forces raised or maintained by an Acceding State which are attached to, or operating with, any of the armed forces of the Dominion

2 Naval military and air force works administration of cantonment areas

3 Arms fire-arms ammunition

4 Explosives

## B External Affairs

1 External affairs, the implementing of treaties and agreements with other countries, extradition including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India

2 Admission into and emigration and expulsion from, India including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State, pilgrimages to places beyond India

3 Naturalisation

## C Communications



1 Posts and telegraphs including telephones, wireless broadcasting and other like forms of communication

2 Federal railways the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares station and service terminal charges interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers

3 Maritime shipping and navigation including shipping and navigation on tidal waters, Admiralty jurisdiction

4 Port quarantine

5 Major ports that is to say, the declaration and delimitation of such ports and the constitution and powers of Port Authorities therein

6 Aircraft and air navigation the provision of aerodromes, regulation and organisation of air traffic and of aerodromes,

7 Lighthouses including lightships beacons and other provisions for the safety of shipping and aircraft

8 Carriage of passengers and goods by sea or by air

9 Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area outside that unit

#### *D. Auxiliary*

1 Elections to the Dominion Legislature, subject to the provisions of the Act and of any Order made thereunder

2 Offences against laws with respect to any of the aforesaid matters

3 Inquiries and statistics for the purposes of any of the aforesaid matters

4 Jurisdiction and powers of all courts with respect to any of the aforesaid matters but except with the consent of the Ruler of the Acceding State not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State

### APPENDIX II

#### **Standstill Agreement Between Dominion and States**

*Agreement Between The State Of* *And The*  
*Dominion of India*

Whereas it is to the benefit and advantage of the Domi-

nion of India as well as of the Indian States that existing agreements and administrative arrangements in the matters of common concern, should continue for the time being, between the Dominion of India or any part thereof and the Indian States-

Now therefore it is agreed between the . State and the Dominion of India that —

- 1 (1) Until new agreements in this behalf are made, all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or, as the case may be, the part thereof and the State ,
- (2) In particular, and without derogation from the generality of sub-clause (1) of this clause the matters referred to above shall include the matters specified in the Schedule to this Agreement

2 Any dispute arising out of this Agreement, or out of the agreements or arrangements hereby continued, shall, unless any provision is made therein for arbitration by an authority other than the Governor-General or Governor, be settled by arbitration according, as far as may be, to the procedure of the Indian Arbitration Act, 1899.

3 Nothing in this Agreement includes the exercise of any paramountcy functions ,

State

Secretary to the Government of India.

#### SCHEDULE

1. Air Communications
- 2 Arms and equipment
- 2 Control of commodities
- 4 Currency and coinage
- 5 Customs-
- 6 Indian States Forces
- 7 External Affairs.
- 8 Extradition.
- 9 Import and Export Control
- 10 Irrigation and Electric Power
- 11 Motor vehicles.
- 12 National Highways

- 13 Opium.
- 14 Posts, Telegraphs and Telephones.
- 15 Railways (including police and other arrangements in Railway lands)
- 16 Salt
- 17 Central Excises relief from double income-tax and other arrangements relating to taxation
- 18 Wireless

### APPENDIX III

#### **Statement made by the Cabinet Mission to India and His Excellency the Viceroy on May 16th, 1946**

1 On the 15th March last, just before the despatch of the Cabinet Mission to India, Mr Attlee, the British Prime Minister, used these words —

"My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide, but our desire is to help her to set up forthwith the machinery for making that decision.

"I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so.

"But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free people. If, on the other hand she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible."

2 Charged in these historic words, we—the Cabinet Ministers and the Viceroy—have done our utmost to assist the two main political parties to reach agreement upon the fundamental issue of the unity or division of India. After prolonged discussions in New Delhi we succeeded in bringing in the Congress and the Muslim League together in conference at Simla. There was a full exchange of views and both parties were prepared to make considerable concessions in order to try to reach a settlement, but it ultimately proved impossible to close the remainder of the gap between the parties and so no agreement could be concluded. Since no agreement has been reached, we feel that it is our duty to put forward what we consider are the best arrangements

possible to ensure speedy setting up of the new constitution. This statement is made with the full approval of His Majesty's Government in the United Kingdom.

3 We have accordingly decided that immediate arrangements should be made whereby Indians may decide the future constitution of India and an interim Government may be set up at once to carry on the administration of British India until such time as a new constitution can be brought into being. We have endeavoured to be just to the smaller as well as to the larger sections of the people, and to recommend a solution which will lead to a practicable way of governing the India of the future, and will give a sound basis for defence and a good opportunity for progress in the social, political and economic field.

4 It is not intended in this statement to review the voluminous evidence which has been submitted to the Mission, but it is right that we should state that it has shown an almost universal desire, outside the supporters of the Muslim League, for the unity of India.

5 This consideration did not, however, deter us from examining closely and impartially the possibility of a partition of India, since we were greatly impressed by the very genuine and acute anxiety of the Muslims lest they should find themselves subject to a perpetual Hindu-majority rule. This feeling has become so strong and widespread amongst the Muslims that it cannot be allayed by mere paper safeguards. If there is to be internal peace in India it must be secured by measures which will assure to the Muslims a control in all matters vital to their culture, religion, and economic or other interests.

6 We therefore examined in the first instance the question of a separate and fully independent sovereign state of Pakistan as claimed by the Muslim League. Such a Pakistan would comprise two areas: one in the North-West consisting of the provinces of the Punjab, Sind, North-West Frontier and British Baluchistan; the other in the North-East consisting of the provinces of Bengal and Assam. The League were prepared to consider adjustment of boundaries at a later stage, but insisted that the principle of Pakistan should first be acknowledged. The argument for a separate state of Pakistan was based first, upon the right of the Muslim majority to decide their method of government according to their wishes; and secondly, upon the necessity to include substantial areas in which Muslims are in a minority, in order to make Pakistan administratively and economically workable.

The size of the non-Muslim minorities in a Pakistan

comprising the whole of the six provinces enumerated above would be very considerable as the following figures\* show —

North-Western Area—

	<i>Muslims</i>	<i>Non-Muslim</i>
Punjab	16,217,242	12,201,577
North-West Frontier Province	2,781,797	249,270
Sind	3,238,325	1,326,683
British Baluchistan	438,930	62,701
	<hr/> 22,653,294	<hr/> 13,840,231
	62.07 per cent	37.62 per cent

North-Eastern Area—

Bengal	33,005,434	27,301,091
Assam	3,442,479	6,762,254
	<hr/> 36,447,913	<hr/> 34,063,345
	51.69 per cent	48.31 per cent

The Muslim minorities in the remainder of British India number some 30 million dispersed amongst a total population of 188 million.

These figures show that the setting up of a separate sovereign state of Pakistan on the lines claimed by the Muslim League would not solve the communal minority problem, nor can we see any justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population is predominantly non-Muslim. Every argument that can be used in favour of Pakistan can equally, in our view, be used in favour of the exclusion of the non-Muslim areas from Pakistan. This point would particularly affect the position of the Sikhs.

7 We, therefore, considered whether a smaller sovereign Pakistan confined to the Muslim majority areas alone might be a possible basis of compromise. Such a Pakistan is regarded by the Muslim League as quite impracticable because it would entail the exclusion from Pakistan of (b) the whole of the Ambala and Jullundur divisions in the Punjab, (c) the whole of Assam except the district of Sylhet, and (d) a large part of Western Bengal including Calcutta, in which city the percentage of the Muslim population is 23.6 per cent. We ourselves are also convinced that any solution which involves a radical partition of the Punjab and Bengal, as this would do, would be contrary to the wishes and interests of a very large proportion of the inhabitants of these provinces.

\* All population figures in this statement are from the most recent census taken in 1941.

Bengal and the Punjab each has its own common language and a long history and tradition. Moreover, any division of the Punjab would of necessity divide the Sikhs leaving on both sides of the boundary. We have therefore been forced to the conclusion that neither a larger nor a smaller sovereign state of Pakistan would provide an acceptable solution for the communal problem.

8. Apart from the great force of the foregoing arguments there are weighty administrative, economic and military considerations. The whole of the transportation and postal and telegraph systems of India have been established on the basis of a united India. To disintegrate them would gravely injure both parts of India. The case for a united defence is even stronger. The Indian Armed Forces have been built up as a whole for the defence of India as a whole, and to break them in two would inflict a deadly blow on the long traditions and high degree of efficiency of the Indian Army and would entail the gravest dangers. The Indian Navy and Indian Air Force would become much less effective. The two sections of the suggested Pakistan contain the two most vulnerable frontiers in India and for a successful defence in depth the area of Pakistan would be insufficient.

9. A further consideration of importance is the greater difficulty which the Indian States would find in associating themselves with a divided British India.

10. Finally, there is the geographical fact that the two halves of the proposed Pakistan state are separated by some seven hundred miles and the communications between them both in war and peace would be dependent on the goodwill of Hindustan.

11. We are therefore unable to advise the British Government that the power which at present resides in British hands should be handed over to two entirely separate sovereign states.

12. This decision does not, however, blind us to the very real Muslim apprehensions that their culture and political and social life might become submerged in a purely unitary India, in which the Hindus with their greatly superior numbers must be a dominating element. To meet this the Congress have put forward a scheme under which provinces would have full autonomy subject only to a minimum of central subjects, such as foreign affairs, defence and communications.

Under this scheme provinces if they wished to take

part in economic and administrative planning on a large scale could cede to the centre optional subjects in addition to the compulsory ones mentioned above.

13 Such a scheme would, in our view present considerable constitutional disadvantages and anomalies. It would be very difficult to work a central executive and legislature in which some ministers, who dealt with compulsory subjects, were responsible to the whole of India while other ministers, who dealt with optional subjects, would be responsible only to those provinces who had elected to act together in respect of such subjects. This difficulty would be accentuated in the central legislature, where it would be necessary to exclude certain members from speaking and voting when subjects with which their provinces were not concerned were under discussion. Apart from the difficulty of working such a scheme, we do not consider that it would be fair to deny to other provinces, which did not desire to take the optional subjects at the centre, the right to form themselves into a group for a similar purpose. This would indeed be no more than the exercise of their autonomous powers in a particular way.

14 Before putting forward our recommendations we turn to deal with the relationship of the Indian States to British India. It is quite clear that with the attainment of independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new government. This fact has been fully recognised by those whom we interviewed from the States. They have at the same time assured us that the States are ready and willing to co-operate in the new development of India. The precise form which their co-operation will take must be a matter for negotiation during the building up of the new constitutional structure and it by no means follows that it will be identical for all the States. We have not therefore dealt with the States in the same detail as the provinces of British India in the paragraphs which follow.

15 We now indicate the nature of a solution which in our view would be just to the essential claims of all parties and would at the same time be most likely to bring about a stable and practicable form of constitution for All-India.

We recommend that the constitution should take the following basic form —

- (1) There should be a Union of India, embracing both British India and the States which should deal with the following subjects 'foreign affairs, defence, and communications, and should have the powers necessary to raise the finances required for the above subjects
- (2) The Union should have an executive and a legislature constituted from British Indian and States representatives. Any question raising a major communal issue in the legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting
- (3) All subjects other than the Union subjects and residuary powers should vest in the provinces
- (4) The States will retain all subjects and powers other than those ceded to the Union
- (5) Provinces should be free to form groups with 'executive and legislatures' and each group could determine the provincial subjects to be taken in common
- (6) The constitution of the Union and of the groups should contain a provision whereby any province could by a majority vote of its legislative assembly call for a reconsideration of the terms of the constitution after an initial period of ten years and at ten-yearly intervals thereafter

16 It is not our object to lay out the details of a constitution on the above programme but to set in motion machinery whereby a constitution can be settled by Indians for Indians

It has been necessary, however, for us to make this recommendation as to the broad basis of the future constitution because it became clear to us in the course of our negotiations that not until that had been done was there any hope of getting the two major communities to join in the setting up of the constitution-making machinery

17. We now indicate the constitution-making machinery which we propose should be brought into being forthwith in order to enable a new constitution to be worked out,

18 In forming any assembly to decide a new constitutional structure the first problem is to obtain as broad-based and accurate a representation of the whole population as is



possible. The most satisfactory method obviously would be by election based on adult franchise, but any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formation of the new constitution. The only practicable course is to utilise the recently elected Provincial Legislative Assemblies as electing bodies. There are, however, two factors in their composition which make this difficult. First, the numerical strengths of Provincial Legislative Assemblies do not bear the same proportion to the total population in each province. Thus, Assam with a population of 10 million, has a Legislative Assembly of 138 members, while Bengal, with a population six times as large, has an Assembly of only 250. Secondly, owing to the weightage given to minorities by the Communal Award, the strengths of the several communities in each Provincial Legislative Assembly are not in proportion to their numbers in the province. Thus the number of seats reserved for Moslems in the Bengal Legislative Assembly is only 48 per cent. of the total, although they form 55 per cent. of the provincial population. After a most careful consideration of the various methods by which these points might be corrected, we have come to the conclusion that the fairest and most practicable plan would be—

- (a) to allot to each province a total number of seats proportional to its population, roughly in the ratio of one to a million, as the nearest substitute for representation by adult suffrage,
- (b) to divide this provincial allocation of seats between the main communities in each province in proportion to their population
- (c) to provide that the representatives allocated to each community in a province shall be elected by members of that community in its Legislative Assembly.

We think that for these purposes it is sufficient to recognise only three main communities in India, General, Moslem and Sikh, the "General" Community including all persons who are not Moslems or Sikhs. As smaller minorities would upon a population basis have little or no representation, since they would lose the weightage which assures them seats in Provincial Legislatures, we have made the arrangements set out in paragraph 20 below to give them a full representation upon all matters of special interest to minorities.

19 (i) We therefore propose that there shall be elect-

ed by each Provincial Legislative Assembly (General, Moslem or Sikh) electing its own representatives by the method of proportional representation with single transferable vote —

TABLE OF REPRESENTATION

SECTION A

Province—	General Muslim Total		
Madras	45	4	49
Bombay	19	2	21
United Provinces	47	8	55
Bihar	31	5	36
Central Provinces	16	1	17
Orissa	9	0	9
Total	167	20	187

SECTION B

Province—	General Muslim Sikh Total			
Punjab	8	16	4	28
North-West Frontier Province	0	3	0	3
Sind	1	3	0	4
Total	9	22	4	35

SECTION C

Province—	General Muslim Total		
Bengal	27	33	60
Assam	7	3	10
Total	34	36	70
Total for British India	292		
Maximum for Indian States	93		
Total	385		

NOTE —In order to represent the Chief Commissioners' Provinces there will be added to Section A the member representing Delhi in the Central Legislative Assembly, the member representing Ajmer-Merwara in the Central Legislative Assembly and a representative to be elected by the Coorg Legislative Council

To Section B will be added a representative of British Baluchistan

(ii) It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 53, but the method of selection will have to be determined by consultation. The States would in the preliminary stage be represented by a negotiating committee

(iii) Representatives thus chosen shall meet at New Delh. as soon as possible

(iv) A preliminary meeting will be held at which the general order of business will be decided, a chairman and other officers elected and an Advisory Committee (see paragraph 20 below) on rights of citizens, minorities and excluded areas set up. Thereafter the provincial representatives will divide up into three sections shown under A, B and C in the Table of Representation in sub-paragraph (i) of this paragraph

(v) These sections shall proceed to settle provincial constitutions for the provinces included in each section and shall also decide whether any group constitution shall be set up for those provinces and if so with what provincial subjects the group should deal. Provinces should have power to opt out of groups in accordance with the provisions of sub-clause (iii) below

(vi) The representatives of the sections and the Indian States shall reassemble for the purpose of settling the Union constitution

(vii) In the Union Constituent Assembly resolutions varying the provisions of paragraph 15 above or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. The Chairman of the Assembly shall decide which, if any, resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving the decision

(viii) As soon as the new constitutional arrangements have come into operation it shall be open to any province to elect to come out of any group in which it has been placed. Such a decision shall be taken by the legislature of the province after the first general election under the new constitution

20. The Advisory Committee on the rights of citizens,

minorities and tribal and excluded areas will contain due representation of the interests affected and their function will be to report to the Union Constituent Assembly upon the list of fundamental rights clauses for protecting minorities, and a scheme for the administration of tribal and excluded areas, and to advise whether these rights should be incorporated in the provincial, the group or the Union constitutions

21 His Excellency the Viceroy will forthwith request the provincial legislatures to proceed with the election of their representatives and the States to set up a negotiating Committee

It is hoped that the process of constitution-making can proceed as apidly as the complexities of the task permit so that the interim period may be as short as possible

22 It will be necessary to negotiate a treaty between the Union Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power

23 While the constitution-making proceeds the administration of India has to be carried on. We attach the greatest importance therefore to the setting up at once of an interim Government having the support of the major political parties. It is essential during the interim period that there should be the maximum of co-operation in carrying through the difficult tasks that face the Government of India. Besides the heavy tasks of day-to-day administration, there is the grave danger of famine to be countered, there are decisions to be taken in many matters of post-war development which will have a far-reaching effect on India's future and there are important international conferences in which India has to be represented. For all these purposes a government having popular support is necessary. The Viceroy has already started discussions to this end and hopes soon to form an interim Government in which all the portfolios, including that of War Member will be held by Indian leaders having the full confidence of the people. The British Government, recognising the significance of the changes, will give the fullest measure of co-operation to the Government so formed in the accomplishment of its tasks of administration and in bringing about as rapid and smooth a transition as possible.

24 To the leaders and people of India, who now have the opportunity of complete independence, we would finally say this. We and our Government and countrymen hoped that it would be possible for the Indian people themselves to agree upon the method of framing the new Constitution under which

they will live. Despite the labours which we have shared with the Indian parties and the exercise of much patience and goodwill by all, this has not been possible. We, therefore, now lay before you proposals which, after listening to all sides and after much earnest thought we trust will enable you to attain your independence in the shortest time and with the least danger of internal disturbance and conflict. These proposals may not, of course, completely satisfy all parties, but you will recognise with us that, at this supreme moment in Indian history, statesmanship demands mutual accommodation and we ask you to consider the alternative to the acceptance of these proposals. After all the efforts which we and the Indian parties have made together for agreement, we must state that, in our view, there is small hope of a peaceful settlement by the agreement of the Indian parties alone. The alternative would, therefore be a grave danger of violence, chaos and even civil war. The gravity and duration of such a disturbance cannot be foreseen, but it is certain that it would be a terrible disaster for many millions of men, women and children. This is a possibility which must be regarded with equal abhorrence by the Indian people, our own countrymen and the world as a whole. We therefore lay these proposals before you in the profound hope that they will be accepted and operated by you in the spirit of accommodation and goodwill in which they are offered. We appeal to all who have the future good of India at heart to extend their vision beyond their own community or interest to the interests of the whole 400 millions of Indian people.

We hope that the new independent India may choose to be a member of the British Commonwealth. We hope, in any event, that you will remain in close and friendly association with our people. But these are matters for your own free choice. Whatever that choice may be, we look forward with you to your ever-increasing prosperity among the greatest nations of the world and to a future even more glorious than your past.

